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BILL DRAFTING MANUAL

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MONTANA LEGISLATIVE COUNCIL
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Room 138 State Capitol
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PREFACE

The first Bill Drafting Manual was written as a staff project by the Legislative Council staff during the 1960 and 1961 interim period to provide a uniform standard for bill drafting. Its main purpose was to provide the draftsman with a reference source to the requirements of Senate and House rules, statutes, the Constitution, and case law, as well as suggestions on the mechanics, technique, and style of legislative drafting.

Since 1961 the Montana Legislature has changed its rules many times, and it is now operating under a new Constitution with a drastically overhauled legislative article. These changes, as well as a new computerized bill drafting system, rendered the 1961 manual obsolete in many respects.

The second manual was written in 1974. It liberally incorporated the comments on grammar, punctuation, capitalization, and style from the old manual but updated and substantially changed the remainder of the manual.

In 1975 the Legislature created the office of Code Commissioner and mandated a recodification of Montana statutes. The third printing of the manual incorporated the system of punctuation, capitalization, and numbering adopted for the recodification project. The only noticeable change was in the use of numbers.

The fourth printing in 1978 did not change any existing rules but did add a substantial amount of material, especially in Chapters 2 and 9.

In the fifth printing in 1980, the sixth printing in 1982, and this seventh printing, certain portions have been revised or expanded to reflect events or increased experience. Form rules remain virtually unchanged.

Diana S. Dowling
Code Commissioner

Robert C. Pyfer
Director of Legal Services

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CHAPTER 1

BILL DRAFTING GENERALLY

1-1 Policy and the Bill Drafter

Bills may be drafted for diverse persons and groups by various drafters. Some are drafted by the Legislative Council staff at the request of a legislator or committee, some are drafted by personnel of departments of state government, and some are drafted by counsel retained by private individuals or groups. Whatever the position of the drafter, it is his function to translate the objectives and policies of the person or group for whom he is drafting into a clear, concise legislative draft. The drafter must not express his personal thoughts or promote his own interests but must remain an impartial technician. To do otherwise is to risk drafting legislation containing ideas or implications not intended by the person for whom the bill is drafted.

1-2 Constitutionality

A bill is, in essence, a proposed statute. A statute is the vehicle by which the Legislature exercises its lawmaking power. The United States and Montana Constitutions are the fundamental law upon which our government is based, and any statute enacted by the Legislature must conform thereto. Aside from the constraints of physical reality, the Legislature's lawmaking power is limited only by these two Constitutions and by federal statutes. Under the Supremacy Clause (Art. VI) of the U.S. Constitution, any act of Congress that is not itself in violation of the U.S. Constitution may not be contravened by a state legislature. Thousands of volumes have been written on the subject of constitutionality of statutes. However, the purpose of this manual is not to provide an exhaustive discussion of these problems as they may be encountered in bill drafting but to emphasize that constitutionality is a paramount consideration and to bring to the reader's attention a few of the more frequently recurring problems. At a minimum, all bill drafters should periodically review the entire Montana Constitution, which contains many of the same provisions as the U.S. Constitution, and then refresh their memories by referring to the Constitutions whenever a potential problem surfaces. The bill drafter is in a unique position with relation to the public sector in general and the legal community in particular because he has the opportunity, with the concurrence of the bill requestor, to forestall constitutional difficulties before they cause confusion, litigation, and expense. Frequently, a bill can be drafted to avoid an inherent constitutional problem while still accomplishing the basic goals of the requestor. Many bill drafting requests arise from a particular problem as

perceived by an individual or relatively small interest group. The legislator/requestor, who is solicited to provide a legislative remedy, often wishes only to address the particular problem with a minimum of governmental expense and interference. For these reasons, problems involving equal protection of the law (Art. II, sec. 12, Mont. Const.) and special legislation (Art. V, sec. 12, Mont. Const.) tend to recur. Underlying these provisions is the basic precept that state policy should be made to apply evenhandedly to all persons. These provisions, however, are not absolute prohibitions of all forms of discrimination. The courts will apply various standards under these provisions, depending upon the purpose of the statute and its relationship to the type of discrimination proposed, whether the discrimination involves a suspect classification (e.g., race), whether a fundamental right (e.g., free speech) is adversely affected, and upon other considerations. Suffice it to say that whenever a requested bill draft would, if passed and approved, confer a benefit or impose a burden on certain individuals, groups, or classes of persons to the exclusion of others, the drafter should consider the constitutional implications.

Because the Legislature is only in session periodically and because of the demands of an increasingly complex and technical society, the Legislature sometimes finds it appropriate to delegate some of its power to another entity. Under the separation of powers doctrine, no branch of government may exercise the powers properly belonging to another (Art. III, sec. 1, Mont. Const.). The Legislature may provide for executive branch discretion in carrying out the law only if it provides sufficient statutory standards and criteria to guide the executive agency (In re Gate City S & L Ass'n, 597 P2d 84 (1979)). Such guidance is particularly important in the context of administrative rulemaking, where the power to make legislative rules having the force of law may be delegated. (See discussion of bills granting rulemaking power and statements of intent in sections 6-2 and 6-3.) On the other hand, legislatures generally may not interfere with the executive branch in the purely administrative aspects of carrying out the law, such as by imposing a hiring freeze or otherwise making specific staffing and resource allocation decisions (In re Opinion of the Justices to the Governor, 341 N.E. 2d 354 (1976); Anderson v. Lamm, 195 Colo. 437, 579 P2d 620 (1978)). Further, the Legislature, within its sphere of power, must act as an entire body and may not delegate decisionmaking authority to a legislative committee (Judge v. Legislative Fin. Comm., 168 M 470, 543 P2d 1317 (1975)).

Legislative power and responsibility may not be abdicated to private organizations (St. v. Holland, 37 M 393, 96 P 719 (1908)) or to the federal government (Lee v. St., 38 St. Rep. 1729 (1981), rehearing denied, 38 St. Rep. 1931 (1981)). It is a common temptation to simply incorporate the regulations of a private organization or federal laws or regulations into the Montana law by reference. There is no infirmity in incorporating such laws

or regulations as they exist at the time of the Montana enactment. The problem lies in referentially incorporating future changes in those laws or regulations (i.e., as they may be amended from time to time) because this has the effect of allowing an entity other than the state Legislature to amend Montana law. However, in Lee, the Montana Supreme Court noted that a "temporary emergency" power in the Attorney General to change the highway speed limit between legislative sessions to avoid loss of federal funds might be permissible. The bill drafter should avoid referential incorporation of such laws or regulations "as amended"; further, when referentially incorporating such laws or regulations as they exist at the time of enactment, this incorporation should be expressly stated (e.g., "Eligibility criteria are those provided for in 35 U.S.C. 405, as that statute reads on [the effective date of this act]"). For a statutory treatment of the problem of incorporation by reference in the administrative rulemaking context, see section 2-4-307, MCA. Incorporation by reference of other MCA sections does not present constitutional problems and can often be used to good advantage. (See Internal References, section 2-18 of this manual.)

For discussion of the constitutional provision dealing with bill titles, see section 4-4.

1-3 Research and Drafting

Research, organizing, and writing are three steps inherent in all writing. Bill drafting is no exception.

Occasionally a drafter will have the facts and law sufficiently well in mind so that drafting can be done with little research. However, the precision and complexity of the law usually require research.

The extent of research required depends on the complexity of the drafting problem. Defining that problem is the first step. Determine the exact purpose of the bill, and define the problem the proponent wishes to solve.

Analysis of the problem to be solved will enable the drafter to determine the sources he must consult for more information. Sources of information that must be considered by the drafter include the state and federal Constitutions (see Constitutionality, section 1-2); existing federal, state, or local statutes; case law; pending law; and applicable federal, state, or local regulations.

The importance of reviewing existing state statutes in the area of law to which the draft relates cannot be overemphasized. Omission of this step will more often than not result in conflicts, overlaps, or redundancies, thus creating more problems than are solved. Therefore, a determination as to which existing statutes, if any, should

be repealed or amended must be made with regard to every bill draft.

Research preparation must be as thorough as time allows. A thorough understanding of the legal and practical factors involved in a bill is necessary to insure production of a bill that will accomplish the purpose of its proponent. The drafter has a professional obligation to advise the proponent of possible legal or practical problems of which the drafter is aware.

No one can tell the drafter when enough research is done. The drafter must determine when to stop gathering information and start writing. Judgment must be exercised to avoid wasting time in endless pursuit of unnecessary information.

1-4 Organization

Organize the information at hand. Develop an outline that places the elements of the problem in a logical pattern. A bill for only a simple amendment to existing law will present no organizational problem. A major new body of law will require considerable effort to guarantee clarity. Some bill parts are so common that their placement in a bill has been standardized. A drafter must be familiar with the standard bill format discussed in Chapter 4 of this manual before he begins to organize his bill.

Begin to draft the bill when the work is outlined. Rewrite the bill as often as is necessary to achieve clarity, coherence, and unity. Revise the organization of the bill if revision contributes to clarity.

1-5 Timesavers

There are several timesavers that may be used in preparing a draft bill.

(1) Each section of a long bill may be placed on a separate sheet of paper until a cohesive draft is prepared. Sections can then be shuffled and rearranged with ease as research and construction proceed. Sections should not be numbered and internal references should not be filled in until the final arrangement is reached.

(2) Copies of any current statutes proposed for amendment may be taped to draft pages and deletions and new language indicated in red pen on the copy. Legislative Council staff prefers that amendments be submitted to it in this "cut and paste" form with all deletions and additions clearly indicated.

(3) A list of the introductory clauses used when

amending or repealing sections has been provided to Legislative Council data entry operators so that the drafter need not write the entire clause each time it is needed. For instance, the drafter may merely write "amend 1-1-101" and the operator will enter the proper introductory amending clause: "Section 1. Section 1-1-101, MCA, is amended to read:".

(4) At the end of the bill draft write "End" so that the operator, proofers, etc., will know it is the end. Often there are copies of background information, preliminary drafts, and/or other assorted documents attached. Those handling the bill should not have to spend time sorting through this material to determine where the bill ends.

1-6 Drafting Aids

The following serve as aids in drafting bills:

(1) Other Montana statutes. Without creating a potential conflict or overlap, a bill may be patterned after existing law. For example, when drafting a bill creating a board to license a particular occupation, the drafter should examine various licensing laws for a suitable model. The drafter, however, must be very careful to make all necessary adjustments to such a model. Not only is it a rare case that allows near verbatim use of existing law in a bill draft from the practical and policy standpoints, but often existing statutes are poorly organized and unclearly worded; this is particularly true of very old statutes.

(2) Similarly, bills introduced in past sessions may be helpful. The subject indexes of Senate and House journals or the Combined Final Status (beginning in 1983, called the History and Final Status) publication may be used to determine whether a bill on a particular topic was introduced in that session and the bill's number. The Legislative Council keeps at least one copy of bills introduced in the most recent legislative session. The office of the Secretary of State has copies of all introduced bills for all past sessions.

(3) The daily subject index, which references all bills introduced to date in a current legislative session, should be checked to see if an identical or similar bill has been introduced.

(4) Comparison of laws of other states on the same subject is usually very beneficial. In following a law from another state, the drafter must be very careful to make the bill language conform to Montana law and to good drafting practice and style. (Be especially careful to check the constitutions of both states. What is constitutional in another state may not be in Montana.) If the draft submitted to the Legislative Council is drawn from another state, a

note should be attached so indicating and providing citations; if the bill becomes law, this information will be passed on to MCA subscribers by way of a "Source" compiler's comment included in the MCA annotations.

(5) A list of uniform and model acts and Suggested State Legislation should be checked to see if a uniform act (which is intended to be followed exactly in substance), a model act, or suggested act could be used as a guide. If not readily apparent from the draft, a note indicating the source of the draft should be attached as in (4) above.

(6) If time permits, the drafter should consult with experts in the field affected. If the bill affects a governmental or state agency, a conference with an appropriate staff member from the agency is very helpful. If the proponent permits, a draft of the proposal should be sent to the agency for comment.

(7) See Chapter 9 for a list of constitutional and statutory provisions and legislative rules relating to bills.

1-7 Use of Internal Reference List

When amending or repealing a section, the drafter must check the Internal Reference List. (By using its computer search facilities, the Council has compiled this list, which contains each code section number that is referred to by another code section.)

For example, the internal reference list for section 30-4-105, MCA, appears as follows:

REFERENCES TO SECTION 30-4-105

30-3-102	30-3-102	30-3-102	30-3-102
30-4-104	30-4-104	30-4-104	30-4-104
30-4-104	30-4-104	30-8-102	

In the example above, 30-3-102 appears four times. This means that 30-4-105 appears four times in 30-3-102. Likewise, 30-4-105 appears six times in 30-4-104. Section 30-4-105 appears only once in 30-8-102.

If a drafter is amending 30-4-105, he must read 30-3-102, 30-4-104, and 30-8-102 to determine whether the amendment affects those sections. If a drafter is repealing 30-4-105, it is mandatory that each of those sections referring to 30-4-105 be amended to delete the reference and make any other necessary modifications.

The drafter must be extremely careful when renumbering subsections within a section. For instance, if the drafter changes 1-1-101(2)(b) to 1-1-101(3)(c), all references in other statutes to 1-1-101(2)(b) are rendered erroneous;

these references may be found by use of the internal reference list. When renumbering subsections within a section, the entire section must be read carefully for references to subsections such as "subsection (3)". Such references are not picked up in the internal reference list because the section number does not appear in the reference; only the subsection number appears.

Copies of the Internal Reference List are available from the Legislative Council.

1-8 Bill Drafter Checklist

Appendix R and the "Bill Drafting Request" form (available upon request from the Legislative Council) provide a "Bill Drafter Checklist" that will aid the drafter in ensuring that essential matters have been considered. The completed checklist will also provide the Legislative Council and the Legislature with useful information. If the drafter does not have a "Bill Drafting Request" form, the checklist in Appendix R should be copied, filled out, and attached to any bill draft submitted to the Legislative Council. Each item on the list calls for a "yes", "no", or "N/A" (not applicable) entry.

CHAPTER 2

STYLE AND LANGUAGE

2-1 Introduction

Bills should be written in a simple, clear, and direct style, phrased for the common reader as well as for the political or legal expert.

A poorly drafted, ambiguous bill will waste the time of citizens affected, confuse those charged with its administration, lead to litigation, and likely fail to accomplish the purpose of the author. Good drafting requires concise wording that is understandable by a person who has no special knowledge of the subject.

If a paragraph in a bill has to be paraphrased to make it intelligible to the layman, it needs revising. In Montana, the common-law tradition has manifested itself in the timeworn, nonessential phrases and rhetorical flourishes found in our older legislative enactments. The suggestions contained in this chapter are designed to help the drafter avoid the most common faults in style and language evident in some of our present law.

As authority for basic rules of writing, the Legislative Council uses the latest edition of the U.S. Government Printing Office Style Manual and the Gregg Reference Manual, Fifth Edition, by William A. Sabin. Compounding of words is done according to the Style Manual.

Generally, the ordinary rules of grammar apply to legislative writing; however, in a few instances a departure from common usage is suggested.

2-2 Word Choice Generally

The objective in legislative drafting is to make the final product as precise and understandable as possible. There are hundreds of expressions, legal and otherwise, that can be simplified. In general:

- (1) never use a long word where a short one will do;
- (2) if it is possible to omit a word and preserve the desired meaning, always omit it; and
- (3) never use a foreign phrase, a scientific word, or a jargon word if there is an everyday English equivalent.

Remember that the bill must be both precise and clear. While striving for unstilted, clear, natural expression, the drafter must avoid becoming conversational. In conversation,

the speaker reserves the right to explain his meaning. No such right is granted the drafter. He must know exactly what he wants to state. The entire meaning of a bill could be determined by the choice of one key word, so words must be chosen carefully.

An example of the kind of word choice to avoid is the conversational verb construct. This verb form appears most regularly as the combination of an accepted verbal base ("speed") and an accepted preposition ("up"). The resulting formulation ("speed up") is a conversational term unacceptable in bill drafting.

2-3 Tense

Use the present tense. The law speaks in the present, and each law is designed to give a rule for the continuing present. The present tense is a simple and natural form of expression. "The present tense includes the future as well as the present." (See section 1-2-105(1), MCA.)

EXAMPLE A defendant in a criminal action is
(preferred) presumed to be innocent until the contrary
 is proved, and in case of a reasonable
 doubt whether his guilt is satisfactorily
 shown, he is entitled to an acquittal.
 (Present tense)

(avoid) A defendant in a criminal action shall be
 presumed to be innocent until the contrary
 shall be proved, and in case of a
 reasonable doubt whether his guilt shall
 be satisfactorily shown, he shall be
 entitled to an acquittal. (Future tense)

2-4 Mood

Use the indicative mood. The drafter should avoid using the false imperative. The word "shall" should not be used to state a legal result or fact.

EXAMPLE The term "commission" means the water
(preferred) commission.

(avoid) The term "commission" shall mean the water
 commission.

(preferred) A person who violates this act is guilty
 of a misdemeanor.

(avoid) A person who violates this act shall be
 guilty of a misdemeanor.

However, the word "shall" should be used in mandatory

statutes requiring certain acts. Exceptions to this rule are discussed below.

2-5 Shall, May, and Must

"Must" or "must not" is preferred when qualifying an inactive verb, an active verb in the passive voice, or an active verb when the subject is not a person or entity.

EXAMPLE

- | | |
|--------------------|--|
| <i>(preferred)</i> | The applicant must be an adult. |
| <i>(avoid)</i> | The applicant shall be an adult. |
| <i>(preferred)</i> | The applicant must not be a convicted embezzler. |
| <i>(avoid)</i> | The applicant may not be a convicted embezzler. |
| <i>(avoid)</i> | The applicant shall not be a convicted embezzler. |
| <i>(preferred)</i> | The information must be set forth in the application. |
| <i>(avoid)</i> | The information shall be set forth in the application. |
| <i>(preferred)</i> | The application must contain the applicant's name. |
| <i>(avoid)</i> | The application shall contain the applicant's name. |

When qualifying a verb in the active voice, "shall" is used as mandatory and "may not" as prohibitory.

EXAMPLE

- | | |
|--------------------|---|
| <i>(preferred)</i> | The applicant shall sign the application. |
| <i>(avoid)</i> | The applicant must sign the application. |
| <i>(preferred)</i> | The applicant may not submit more than one application. |
| <i>(avoid)</i> | The applicant must not submit more than one application. |
| <i>(avoid)</i> | The applicant shall not submit more than one application. |

Whenever possible, use "shall" only in an imperative or mandatory sense and "may" in a permissive sense. When a right, privilege, or power is conferred, "may" should be

used.

If the power conferred on a public official might be construed by the courts as a duty, the word "may" should be followed by words such as "in his discretion". The Montana Supreme Court in some instances has given a mandatory meaning to the word "may" (State ex rel. Griffin v. Greene, 104 M 460; Hansen v. Havre, 112 M 207; Bascom v. Carpenter, 126 M 129, 135, 136). "Where a statute directs that a thing may be done in one manner it ordinarily implies that it shall not be done in any other manner." (Fletcher v. Paige, 124 M 114, 118)

Do not use "shall" to confer a right, because that implies a duty to enjoy the right.

EXAMPLE He is entitled to an annual salary of
(preferred) \$21,000.

(preferred) His annual salary is \$21,000.

(avoid) He shall receive an annual salary of
 \$21,000.

Do not use a negative subject with an affirmative "shall".

EXAMPLE No person may
(preferred)

(avoid) No person shall

(preferred) He may not

(avoid) He shall not

(preferred) Only the governor may

(avoid) Only the governor shall

As explained by Professor Reed Dickerson, "Literally, 'No person shall...' means that no one is required to act. So read, it negates the obligation, but not the permission, to act. On the other hand, 'No person may...' negates also the permission and is, therefore, the stronger prohibition."

2-6 Negatives

"Nor" may be used alone as a conjunction or with "neither".

Do not use "nor" in the same clause with any other negative; use "or" instead.

EXAMPLE Upon conviction he shall be fined not less
(correct) than \$25 or more than \$500.

(incorrect) Upon conviction he shall be fined not less
than \$25 nor more than \$500.

2-7 Voice

Use the active voice instead of the passive.

EXAMPLE The board shall appoint a director.
(preferred) (Active)

(avoid) A director shall be appointed by the
board. (Passive)

The active voice gives the agent, the doer, its logical position before the verb.

2-8 Number

Use the singular instead of the plural when possible. The singular includes the plural. (See section 1-2-105(3), MCA.)

EXAMPLE A defendant in a criminal action is
(preferred) presumed innocent until the contrary is
proved. (Singular)

(avoid) Defendants in criminal actions are
presumed innocent until the contrary is
proved. (Plural)

2-9 Articles and Demonstrative Adjectives

"A person who violates" is preferred to "any person who violates", "each person who violates", or "all persons who violate". Consistent use of the articles "a" or "an" results in smoother writing and more precise expression.

There are phrases that require the indefinite article to be omitted, especially after a negative. The negative supersedes the article by including it. An example is "No more expeditious way can be found" not "No more expeditious a way". The extra article should always be avoided such as in "a half an hour". "Half an hour" or "a half hour" is correct.

"Such" or "said", as in "such person" or "said board", should also be avoided. "Said" is archaic and should never be used. Usually "such" can be avoided by referring to "the board", "an institution", "a person", "these laws", etc., or by employing the appropriate pronoun such as "he" or "it".

However, occasionally "such" may be needed to identify the thing to which it refers and should be used if necessary to avoid ambiguity.

2-10 Pronouns

Use a pronoun only if its antecedent is unmistakable. A pronoun must agree with its antecedent (the word for which the pronoun stands) in number, gender, and person.

Use a plural pronoun when the antecedent consists of two nouns joined by "and" and a singular pronoun when the antecedent consists of two singular nouns joined by "or" or "nor". When "or" or "nor" joins a singular noun and a plural noun, a pronoun should agree in number with the nearer noun. However, strict application of this rule can distort meaning, so it is usually best to try to make the construction plural.

EXAMPLE The parents or guardian of a person
(*confusing*) alleged to be developmentally disabled has
 the right to have the person examined by a
 professional person of his choice ("his"
 supposedly refers to "guardian" but could
 also refer to the developmentally disabled
 person).

(*better*) The parents or guardians of a person
 alleged to be developmentally disabled
 have the right to have the person examined
 by a professional person of their choice.

2-11 Gender

Avoid using "he or she" and "his or her" when referring to a person affected by a statute. When consistent with the standards of precision and clarity, use sex neutral words such as "person", "individual", "applicant", "candidate", etc. "Words used in the masculine gender include the feminine and neuter." (See section 1-2-105(2), MCA.)

2-12 Redundant Adjectives

Avoid adjectives such as "real", "true", and "actual", and adverbs such as "duly" and "properly". Since these ideas are normally implied, expressing them in some instances creates doubt that they are implied elsewhere. (Reed Dickerson, Legislative Drafting, page 87)

EXAMPLE He shall write his age in the appropriate
(*preferred*) blank.

(*avoid*) He shall write his actual age in the

appropriate blank.

2-13 Consistency

To avoid confusion, the drafter must also be consistent in his use of words. For instance, if he uses "employee" in one section, he should not use "worker" in another section merely for the sake of literary variety. ("Poetic licenses" are never issued to bill drafters.) Also, he should not use the same word to denote different things.

2-14 Provisos

Provisos are clauses introduced by "provided, however", "provided that", "provided further", and "provided always" and properly should be used, if at all, only for introducing exceptions or qualifications to the preceding clause. In fact, they are often used improperly to introduce a new idea or a separate statement not necessarily connected with the preceding clause.

The word "provided" has been so overworked in legislative drafting that it has no definite meaning. Little, if any, significance is given to the word "provided". It must be defined by the court before it can be interpreted. "The word 'provided', when used in a legislative enactment, may create a condition, limitation, or exception to the Act itself, or it may be used merely as a conjunction meaning 'and' or 'before', and as to what sense the word was used must be determined from the context of the Act." (St. v. Bruce, 104 M 500, 516)

It is best to avoid provisos altogether. Introduce an exception or limitation with "except that", "but", or "however"; or simply start a new sentence. If there are many conditions or exceptions, they should be placed in a separate subsection or in a tabulated list at the end of the sentence.

2-15 The Exception

The exception is used to exempt something from the application of the law and should be stated precisely in order to describe only those persons or things intended to be excepted. The direct statement should include all persons and things to be covered by the rule. If there is a simple exception to the rule, place the exception at the end of the rule.

EXAMPLE

A license must be obtained by each person except a person:

- (1) 65 years of age or older;

(2) who has resided in the state for less than 1 year; and

(3) who

Or the exception may be placed in a separate subsection and incorporated by reference into the subsection stating the rule.

EXAMPLE (1) Except as provided in subsection (2), the board may

(2) [This act] does not apply to

2-16 Use of "That" or "Which"

The word "that" initiates a restrictive clause that:

(1) restricts or limits or describes and defines the word(s) modified; and

(2) is necessary to identify the word(s) modified.

The meaning of the sentence is not complete without the "that" clause. The clause is not parenthetical, but vital, so commas should not be used to enclose the clause.

EXAMPLE A fence that conforms to 81-4-101 is a legal fence.

The word "which" initiates a nonrestrictive clause that:

(1) does not restrict the word(s) modified; and

(2) gives additional, supplemental, or descriptive information about the word(s) modified.

The meaning of the sentence is complete without the "which" clause so commas should be used to enclose the clause.

EXAMPLE A fence, which may be a legal fence according to 81-4-101, must be built within 30 days after receiving the permit.

The term "which" is relatively uncommon in good bill drafting because nonessential information is usually inappropriate for statutory language.

2-17 If, When, Where, or Whenever

The word "where" denotes place only.

If the application of a provision of an act is limited by the single occurrence of a condition that may never occur, use "if" to introduce the condition, not "when" or "where".

EXAMPLE If the suspect resists arrest, the officer may use force to subdue him.

If the condition may occur more than once with respect to the object to which it applies, use "whenever", not "if", "when", or "where".

EXAMPLE Whenever the officer receives a call, he shall note the time in his report.

If the condition is certain to occur, use "when", not "if", "where", or "whenever".

EXAMPLE When the statute takes effect, all pending proceedings must be dismissed.

2-18 Internal References

Prior to 1979, creation of internal references to other sections, parts, or chapters of the Code was discouraged in bill drafting because of the rule of Gustafson v. Hammond Irrigation District, 87 M 217, 287 P 640. In Gustafson, the court held that reference to a statute is as that statute existed at the time of its adoption and subsequent repeal or modification of the statute does not affect the reference to the statute in another statute. This rule had the effect of requiring the statutory researcher to trace through the Session Laws to determine when each internal reference was created and how the referenced section read at that time. At the request of the Code Commissioner, the 1979 Legislature amended section 1-2-108, MCA, to add a subsection (2) reversing the Gustafson rule. The use of internal references is, therefore, no longer flatly discouraged and can often be used to provide brevity. However, see St. v. Conrad, 39 St. Rep. 680, for discussion of the applicability of this statute to criminal matters involving retroactive application of an internal reference. (Note that the retroactivity issue was resolved by 1983 amendment subsequent to Conrad.) Avoid overusing internal references because it is difficult to comprehend a section of the law when it has to be read together with many other sections. For discussion of related issues, see "Use of 'This Act'" below.

2-19 Use of "This Act"

Use of the words "this act" should be avoided unless the entire act is permanent and is expected to be codified together. As discovered during the recodification process,

"this act" often creates a problem because the word "act" must be changed to an appropriate term such as "title", "chapter", "part", or "section". References to "this act" may be avoided by substituting reference to specific bill sections that are permanent and, therefore, will be codified (e.g. "[sections 1 through 24]" when sections 25 and 26 are a repealer and an effective date).

It is particularly important to avoid use of "this act" whenever a bill contains an amendment to existing MCA sections because technically the act includes only the deletions and/or additions to the amended MCA sections and not the remainder of those sections. Therefore, use of "this act" will cause confusion concerning its specific reference and present difficulties in changing "this act" to an MCA reference during codification. In such cases, specific references (whether to the MCA sections being amended, other MCA sections, parts, or chapters, new bill sections, or any appropriate combination thereof) must be substituted for "this act". For the same reason, when referring to an MCA section that is being amended, reference must be made to the MCA section number, not the bill section number; to refer to the bill section is to refer only to the amendment, which creates ambiguity and difficulty in codification.

This admonition does not apply to use of "this act" in temporary sections that will not be codified, such as effective date and transition sections.

2-20 Words to Be Avoided

The left-hand column of the following list includes some words and phrases that should be avoided unless there are special reasons to the contrary. Some are flowery, some are archaic, and some are vague; all lack the precision needed for clear expression. The words in the right-hand column are those which the average reader understands more readily.

AVOID	USE
absolutely null and void and of no effect	void
aforesaid; aforementioned; beforementioned	the; that; those; (see "hereinafter")
afforded or accorded	given
and/or	either X or Y or both of them; X and Y or either of them
any and all	(either word)

AVOID

as (in clauses of reason)
 at such time as
 at the time of his death
 attorney- and
 counselor-at-law
 be and the same is hereby
 bonds, notes, checks,
 drafts, and other
 evidences of indebtedness
 bring an action
 carry out
 constitute and appoint
 deal with
 deem
 does not operate to
 due to
 during such time as
 during the course of
 each and all
 employ (meaning to use)
 enter into a contract with
 every person; all persons
 evidence, documentary or
 otherwise
 evince
 examine witnesses and hear
 testimony
 expend
 fail, refuse, or neglect

USE

because; since
 when
 when he dies
 attorney
 is
 evidence of indebtedness
 sue
 execute; complete;
 administer
 appoint
 address; conduct
 consider
 does not
 because
 while
 during
 (either word)
 use
 contract with
 a person
 evidence
 show
 take testimony
 spend
 fail

AVOID

feasible
 formulate
 for the duration of
 for the purpose of
 for the reason that
 forthwith
 from and after
 full and complete
 full force and effect
 give consideration to
 give recognition to
 have knowledge of
 have need of
 he or she; his or her
 hereafter
 hereinafter; hereinbefore;
 hereinabove; above; below;
 following; preceding
 in case
 in cases in which
 in order to
 in the event that
 in sections 1-1-101 to
 1-1-143, inclusive

USE

practicable; workable
 make
 during
 for
 because
 immediately
 after
 full
 force; effect
 consider
 recognize
 know
 need
 he, his (or refer to the
 subject, "the licensee",
 "permitholder", etc.)
 after [the effective date
 of this act]; after
 (calendar date)
 (these are objectionable
 when referring to the
 position of a section or
 other statutory provision;
 if reference is necessary,
 specify the chapter, part,
 section, or subsection by
 number)
 if
 when; whenever; if
 to
 if
 in 1-1-101 through 1-1-143

AVOID

USE

institute	begin; start
is able to	can
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is dependent on	depends on
is directed to	shall
is empowered to	may
is hereby authorized and it shall be his duty to	shall
is hereby vested with power and authority and it shall be his duty in carrying out the provisions of this act to	shall
is required to	shall
is unable to	cannot
it is his duty to	shall
it is lawful to	may
law passed	law enacted
legislative assembly	legislature
make application	apply
make payment	pay
make provision for	provide for
matter transmitted through the mail	mail
maximum	most
means and includes	means; includes (as required)

AVOID

USE

member of a partnership	partner
minimum	least
modify	change
monies, moneys	money
necessitate	require
none whatever	none; no
not later than	before
null and void	void
occasion (verb)	cause
of a technical nature	technical
on or after	after
ordered, adjudged, and decreed	ordered
or, in the alternative	or
party	person (unless referring to party to a suit or action)
per annum	a year
per centum	percent
per day	a day
per foot	a foot
period of time	period; time (as required)
person of suitable age and discretion	adult (or state age)
prior to	before
prosecute its business	conduct its business
provided (conjunction)	if; but
provided, further; provided, however; provided that	except; but; however (or start a new sentence)

AVOID

provision of law
 registered or certified
 mail
 render (meaning to give)
 retain
 rules and regulations
 said
 same
 shall have the power to
 sole and exclusive
 speed up
 subdivision; clause;
 paragraph
 subsequent to
 such
 terminate
 the place of his abode
 to wit
 under the provisions of
 unless and until
 until such time as
 utilize
 whatsoever
 whensoever
 wheresoever
 whosoever

USE

law
 certified mail
 give
 keep
 rules (or, if federal,
 regulations)
 the; that; those
 it; he; him
 may
 exclusive
 hasten; expedite
 subsection
 after
 (do not use if an article
 can be used with equal
 clarity)
 end
 his residence
 (this is verbiage; delete
 it or use "namely")
 under
 unless; until (as
 required)
 until
 use
 whatever
 when; if; whenever
 where
 whoever

AVOID

USE

whomsoever

(archaic; improper)

CHAPTER 3

FORM GUIDE

CAPITALIZATION, PUNCTUATION, AND ABBREVIATION

3-1 Capitalization

Capitalization rules for bill drafting represent an exception to standard usage. In drafting bills capitalize as little as possible. Capitalization has no legal significance, and the lower case is easier to read and write.

Capitalization is clerically controlled, in accordance with the rules that follow, by the Legislative Council staff when bills are prepared for introduction.

(1) Capitalize the first word in a sentence. The first word in each subsection following a colon must also be capitalized if each item expresses a complete thought and follows a complete introductory sentence.

(2) Capitalize months and days of the week.

(3) Capitalize names of specific publications, such as "1972 Standard Industrial Classification Manual" or "Survey of Current Business".

(4) Capitalize "Montana" in "state of Montana" but not "state". Capitalize "County" but not "city" in the name of a county or city, such as "Cascade County", "Cascade and Chouteau Counties", or "city of Butte".

(5) Capitalize names of specific persons or places, such as "Charles Marion Russell" or "Rocky Mountains", and specific regions, such as "Pacific Northwest". Capitalize geographic names, such as Boulder River, but not "school" in "Boulder River school". Do not capitalize words that indicate geographic location, such as "northern Montana".

(6) Capitalize names of historic events, such as "World War II", and holidays, such as "Christmas Day" and "Washington's Birthday".

(7) Capitalize references to a statute compilation, such as "MCA" or "Montana Code Annotated", but not "the statutes" or "the codes" or "the constitution". Do not capitalize the words "chapter" or "section" when referring to the Code or the Constitution, but capitalize the name of a particular title in the Code, such as "Title 19, MCA"; the name of an article in the Constitution, such as "Article V, The Legislature"; and a chapter in the Session Laws, such as "Chapter 5, Laws of 1957". Also, capitalize and spell out

Montana Rules of Civil Procedure, Montana Rules of Evidence, and Administrative Rules of Montana.

(8) Capitalize names of races, citizens, and languages, such as "the tribal councils of the respective Indian tribes", "Spanish", or "French".

(9) Capitalize words pertaining to deity, such as "Almighty God".

(10) Capitalize the name of a particular act, such as "Montana Major Facility Siting Act".

(11) Do not capitalize official titles of state, county, or municipal officers, agencies, or institutions, such as "the governor", "the department of highways", "board of county commissioners", or "Montana state university". The same style is used for officers at the federal level, such as "U.S. department of agriculture", "congress", "supreme court", or "the president", and national organizations, such as "American red cross".

(12) Do not capitalize class designations, such as "class 1", unless they begin a sentence or are in an upper case designation, such as "Class A-1 fishing license".

(13) Do not capitalize "subchapter" or "section" when referring to the Internal Revenue Code, such as "subchapter S." or "section 985, Internal Revenue Code".

Because a resolution is usually a more formal document since the resolution itself is presented or mailed to an agency or party and is not printed in the Code, standard capitalization rules are followed when drafting a resolution. Standard capitalization rules are also followed in appropriation bills.

3-2 Punctuation

Punctuation generally is not considered part of a statute and therefore is subordinate to the text. But courts do look to punctuation to ascertain meaning if the language is unclear. So, besides striving for clear expression through the proper use of words, the draftsman should employ correct punctuation to support the words and avoid ambiguity.

(1) Comma

If a sentence consists of two independent clauses, each with subject and predicate, use a comma before the conjunction.

EXAMPLE The commission shall report annually to

the governor, and it shall cause the report to be printed for public distribution.

An exception to this rule occurs when a sentence starts with a dependent clause that applies to both independent clauses that follow. No comma separates the independent clauses because it would make the introductory dependent clause seem to apply only to the first independent clause.

EXAMPLE If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendation is considered not approved and the bill is returned to the governor for further consideration.

Do not use a comma to separate two predicates joined by a coordinating conjunction.

EXAMPLE The commission shall report annually to the governor and cause the report to be printed for public distribution.

Set off a parenthetical phrase or clause with two commas.

EXAMPLE The report, which must be approved by a majority of the commission members, shall be sent to the governor before July 1 of each year.

When "or" introduces a word or a phrase that identifies or explains the preceding word, set off the explanatory expression with commas.

EXAMPLE Set off parenthetical, or nonessential, elements with commas.

However, if "or" introduces an alternative thought, the expression is not parenthetical and should not be set off by commas.

EXAMPLE The punctuation depends on whether the item is parenthetical or essential.

Words, phrases, or clauses in a series are separated by commas.

EXAMPLE The department shall provide the board with reasonably necessary supplies, equipment, and clerical services.

The use of the comma before the conjunction connecting the last two members of a series is preferable.

EXAMPLE ... wheat, corn, barley, and rye.

Do not set off an essential clause with a comma. An essential clause is one that is necessary to the meaning of the sentence and cannot be omitted.

EXAMPLE Application must be made by July 1 if a
(correct) permit is wanted.

(incorrect) Application must be made by July 1, if a
 permit is wanted.

(correct) No insurer may disburse \$100 or more
 unless a signed voucher is received.

(incorrect) No insurer may disburse \$100 or more,
 unless a signed voucher is received.

(2) Semicolon

Use the semicolon between two main clauses not joined by one of the simple coordinating conjunctions (and, but, or, nor).

EXAMPLE Letters and other private communications
 in writing belong to the person to whom
 they are addressed and delivered; however,
 they cannot be published against the will
 of the writer.

Also use the semicolon to separate two or more coordinate elements, one or both of which contain commas, when needed for clarity.

EXAMPLE The probation officer in each county shall
 assist the conciliation court; but the
 court, with the consent of both parties,
 may make independent investigations.

The presence of the coordinating conjunction "but" in the second example would permit the use of a comma to separate the two main clauses if there were no commas in the second clause.

Use the semicolon to separate coordinate elements in a series introduced by a colon when those elements are dependent clauses or phrases. (See example under "Colon" below.)

(3) Colon

A colon is used most often in legislative drafting to introduce a series, usually in outline form.

EXAMPLE

Each policy must contain:

- (1) the names of the parties to the contract;
- (2) the subject of the insurance; and
- (3) the risks insured against.

A colon also may be used to introduce a long quotation. (See fifth example under "Quotation Marks" below.)

(4) Parentheses and Brackets

Use commas in preference to parentheses when possible. However, occasionally parentheses will serve to clarify the meaning of a sentence.

EXAMPLE

Two or more counties may apply for funds for construction (and operation and maintenance when permitted) under this act.

Do not use brackets as punctuation. Use brackets in a bill to enclose terms, such as "[section 1]", that will be replaced with a code section number. Also, brackets are used in the Montana Code to denote erroneous material or material needing amendment or replacement.

(5) Quotation Marks

In American usage, printers usually place a period or comma inside closing quotation marks whether it belongs logically to the quoted matter or to the whole sentence or context. In bill drafting, clarity is more important than usual, so a period or a comma should be placed outside quotation marks when it does not belong to the quoted matter. In drafting, always use double quotes.

Do not overuse quotation marks. Generally, in legislative drafting quotation marks are used only to enclose titles or texts of acts or laws referred to or incorporated by reference, to enclose defined words or phrases, or to enclose amended code sections. However, names of acts are not quoted in the title of a bill or resolution.

EXAMPLE

(4) The state of Montana accepts and assents to the terms and provisions of the act of congress, approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work".

EXAMPLE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "GAME" TO INCLUDE THE WOOLLY MAMMOTH."

EXAMPLE

(7) "Game" means game animals and game birds, the killing of which is restricted by the laws of Montana.

EXAMPLE

Section 1-1-218, MCA, is amended to read:

"1-1-218. Construction of words giving joint authority. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act code giving the authority."

EXAMPLE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO INCLUDE"

3-3 Abbreviation

Abbreviations are seldom used in legislative writing and should be avoided, except in two instances. "Montana Code Annotated" should be abbreviated to "MCA", and "1 p.m." is preferred to "1:00 o'clock p.m." Do not add "MCA" to a code section number within the text of a section of the Code. (See section 1-2-108(1), MCA, which provides that it is presumed the section number refers to the Montana Code Annotated.)

NUMBERS

3-4 General

Numbers one through nine are spelled out and numbers 10 and over are written in numerals. Round figures of one million or more are spelled out. However, note the exceptions in sections 3-5 through 3-16 below.

five, 22, 1,000, 1 million, 1.5 billion.

3-5 Money

1 cent, 25 cents (up to "99 cents"), 0.5 cent,
\$1, \$25, \$37.50, \$100, \$2,000, \$25,000, \$1,250,000,
\$3,000,000

3-6 Measurements

2 inches (feet, yards, meters, acres, etc.)
2 feet x 3 inches
15 x 30 feet (but a "15- by 30-foot room")
5 pounds (bushels, gallons, etc.)
3 acres (horsepower, etc.)
35 degrees F

3-7 Age

6 years old
52 years, 10 months, 6 days
a 3-year-old child
65th birthday

"A person who is 18 years of age or older" (not "over 18 years of age").

"A person who is under 6 years of age" or "who has not yet reached his 6th birthday."

"A person who is 18 years of age or older and under 66 years of age" (not "between the ages of 18 and 65").

3-8 Time

3 days
1 month
3 fiscal years
noon (not "12 noon")
midnight (not "12 midnight")
9 a.m. (not "9:00 a.m." or "9:00 o'clock a.m.")
1 p.m.
1:30 p.m.

3-9 Percentages

0.3%
3%, 25%
3/4 of 1%
1/2 of 1% or 0.5% (not "1/2%")
57.5%

In a bill title spell out the word "percent" -- do not use the symbol.

3-10 Unit Modifiers

5-day week)
10-year sentence) (measurements)
1-year term)
five-man board (not unit of measurement)

1-, 2-, and 3-year terms (but "term of 5 years")

3-11 Ordinals

First through ninth are spelled out; 10th and over are numerals (first term, 35th day).

3-12 Fractions

Fractions standing alone or followed by "of a" or "of an" are spelled out, as "one-half day" or "three-fourths of an inch". Mixed fractions are written in numerals, such as "2 1/2 times". (This rule holds true even in measurements, but see exception under "Percentages".)

In a unit modifier, use figures, such as "1/2-inch pipe" (in other words, no double hyphen).

3-13 Numbers in Series

Figures are used in a group of two or more numbers when any one is 10 or greater: "The farm has 3 cows and 12 sheep."

3-14 Classes and Grades

Use numerals with class or grade designations: "class 1", "class 10", "class 1-A", "Class A-1", "grade 1", "grade 12"; but school grades are expressed: "1st grade", "2nd grade", "12th grade".

3-15 Dates

Dates should be expressed as follows:

December 31 (not "December 31st" or "31st day of December")
July 12 (not "July 12th")

December 31, 1984, (with comma following year in a complete date, unless at end of sentence)

December 1984

October, November, and December 1984,

A period of time is often expressed as follows: "For the period beginning July 1, 1983, and ending June 30, 1985, ...". A better expression for the same period of time is: "After June 30, 1983, and before July 1, 1985, ...". When this style is used, there can be no mistake that midnight on June 30, 1983, is the beginning of the period and that midnight on June 30, 1985, is the end of the period.

An effective date of July 1 should be expressed as

follows: "after June 30, 1983", or "effective July 1, 1983". ("From July 1, 1983", "after July 1", or "between July 1 and" might be construed to mean a beginning date of July 2 and should be avoided.)

It is better to refer to a day rather than to the time an event will occur, such as "90 days after the day on which judgment is entered" not "90 days after the time...". Usually a period is measured in whole days, not the time of day.

3-16 Bill Titles and Catchlines

In bill titles, follow the above rules. In catchlines, do not use figures; spell out numbers unless it is a date or a very large number. Words look better than numbers in boldface.

CHAPTER 4

THE BILL AND ITS PARTS

4-1 Introduction

A bill is a proposed law as introduced in the Legislature. The bill does not become a law (an "act", "statute") until passed by the Legislature and signed by the Governor or passed over his veto. If the Governor does not sign or veto a bill within 5 days after its delivery to him if the Legislature is in session or within 25 days if the Legislature is adjourned, it becomes a law without signature.

A bill that has become a law is delivered to the Secretary of State who assigns a chapter number to it in the order the bill is received by his office. All laws that pass in any one legislative session are first published in the order of passage in a publication entitled Laws of Montana (Year). This publication is referred to as the Session Laws. All permanent new provisions are assigned code section numbers by the Code Commissioner and are incorporated into the Montana Code Annotated. (A code is merely a systematic arrangement of the laws.)

The proper form and arrangement of a bill have been defined primarily by custom. The Montana Constitution speaks of bill titles in Article V, section 11; section 5-4-101, MCA, prescribes the form of the enacting clause. None of the other bill parts are mandated by law or rule. However, the following form is now used by the Legislative Council. By legislative rule all bills, before they are introduced, must comply with the format, style, and legal form prescribed by the Council. Bills not prepared by the Legislative Council staff must be reviewed by that staff and entered on the automated bill drafting system before introduction; this system and procedure are further explained in Chapter 10.

4-2 Bill Arrangement

(* - a mandatory part of a bill)

1. Bill Identification*

- (a) Legislative Council number
- (b) designation and number
- (c) sponsor line
- (d) "By Request..." line

2. Title*

3. Preamble

4. Enacting Clause*

5. Body*

- (a) short title
- (b) purpose section
- (c) definitions
- (d) basic provisions
- (e) penalty
- (f) repealer
- (g) codification instruction
- (h) coordination instruction
- (i) saving clause
- (j) severability clause or nonseverability clause
- (k) applicability
- (l) effective date

EXPLANATION OF BILL PARTS
(See Appendix O for form.)

4-3 Bill Identification

(1) Legislative Council Number

The number appearing at the top right-hand corner of a bill, such as "LC 0001/01", is the number assigned by the Council staff as the bill request is received. The LC number is used to identify the bill during the drafting process prior to the time of introduction and assignment of a bill number.

(2) Designation and Number

The blank preceding the words "BILL NO." is used to identify the bill as a House or Senate bill, and the blank following is used to number the bill. The blanks are filled in manually by the Chief Clerk of the House or Secretary of the Senate at the time of introduction.

(3) Sponsor Line

The second line of a bill is used to identify the sponsor. The sponsor signs the bill in the blank prior to introduction. If there is more than one sponsor, the chief sponsor signs first. Bills may be sponsored jointly by a Senate and a House member. Both of these members are considered a "chief sponsor" for the jointly sponsored bill. If the bill is introduced in the Senate, it becomes a Senate bill and the Senate chief sponsor signs first. This procedure is reversed if the bill is introduced in the House.

(4) By Request Line

Joint Rule 6-6 provides that if a bill is introduced by request of a state agency that fact must be indicated by inserting "By Request of _____" following the names of the sponsors.

LC 0001/01

EXAMPLE

(bill

identification)

_____BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF _____

Since adoption of the five-bill limit (also in Joint Rule 6-6), it is particularly important that a state agency drafter include this line when the bill draft is submitted to the Legislative Council for review because if the bill is by request of a state agency, it does not apply against the legislator/requestor's five-bill limit.

4-4 Title

(1) General

The title identifies the bill to the legislators and the public and must clearly summarize the contents of the bill. The drafter should be familiar with the substantial body of case law that has developed over defects in titles.

Article V, section 11(3), of the Montana Constitution provides:

Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

The main purpose of the constitutional provision is to insure that the title of a bill gives reasonable notice of the content to legislators and the public. It also prevents multisubject legislation from being passed by the combined votes of the advocates of separate measures when no single measure could be passed on its own merits.

Title challenges under this section of the Constitution may be brought on the grounds that either the title indicates that the bill contains more than one subject or the title does not express clearly the subject of the bill, or both.

It is not always easy to distinguish between these two parts of the constitutional requirement. Most of the Supreme Court decisions deal with the clear expression of subject requirement or with an indistinguishable mixture of both requirements.

The Montana Supreme Court has considered the question of sufficiency of title numerous times. In order to more fully comprehend title drafting problems, the drafter should read these cases, which are listed in Shepard's Citations, or at least review the case notes and Attorney General's opinions contained in the MCA annotations to Article V, section 11, of the Montana Constitution. Under the 1972 Constitution, if a law is challenged as having a defective title, the action must be brought within 2 years after the effective date of the law.

(2) Exceptions to Sufficiency of Title Provision

As stated in Article V, section 11(3), of the Montana Constitution, general appropriation bills and bills for the codification and general revision of the laws are exempt from the unity of subject and clear expression of subject rules.

(3) General Appropriation Bills

In order to fall within the exception, an appropriation bill must be a general appropriation bill; that is, it may embrace nothing but appropriations for "the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools". (See Article V, section 11(4), of the 1972 Montana Constitution.) Further, an incidental provision in an appropriation bill must be germane to the appropriation if it is to fall within the exception. The Supreme Court has held that provisions relating to the expenditure of the money appropriated or its accounting may be included in an appropriation bill without being mentioned in the title (St. v. Ford, 115 M 165, 171). However, in Helena v. Omholt, 155 M 212, the Supreme Court said, "... appropriation bills should not be held to amend substantive statutes by implication. ... Such tactics are recognized as exceedingly bad legislative practice." (The appropriation bill in question contained a section that was irreconcilable with an existing statute, and the lower court had held that the appropriation measure, being a later bill, impliedly repealed the earlier statute.) The Attorney General relied on Helena v. Omholt in finding that a provision in the 1981 general appropriation act should not be given effect because it was in conflict with a permanent substantive statute. Therefore, provisions other than actual appropriations should be included in a general appropriation bill only if germane to expenditure or accounting and consistent with permanent substantive law.

(4) Codification and General Revision

In St. v. District Court, 49 M 146, 150, the Supreme Court said that a bill whose plain purpose was to revise the laws on a particular subject, as well as an omnibus revision bill covering many subjects, is within the revision exception.

In the past, the Supreme Court has found that certain bills come within the codification and general revision exception although the titles do not specifically designate the bills as such. The Supreme Court has never found a bill not within the exception when the title indicated that the bill was a codification or revision.

If a bill is intended to be a codification or general revision, the title should so state.

EXAMPLE "AN ACT FOR THE CODIFICATION AND GENERAL
REVISION OF LAWS RELATING TO PUBLIC
SCHOOLS."

(5) Including List of Amended or Repealed Sections in Title

There is diversity of opinion as to whether reference by number only to a code section to be amended or repealed is sufficient in a title. However, all authorities agree that the title is sufficient if the number of the section to be amended or repealed and an indication of the subject matter of the amendment or repeal are included in the title. "Reference in the title of the amendatory Act to the subject matter of the section to be amended need not be so comprehensive as to constitute a complete index to or abstract of the section. 'All that is required in such case is a reasonable degree of certainty as to the statute to be amended.'" (See St. v. Duncan, 74 M 428, 437.)

Therefore, the title of a bill should indicate the general purpose of the amendment, as well as list the code sections amended or repealed.

EXAMPLE "AN ACT TO AMEND THE LAWS RELATING TO SALE
OF LANDS FOR TAXES BY COUNTY TREASURERS;
AMENDING SECTIONS _____, MCA; AND
REPEALING SECTIONS _____, MCA."

If the bill is a general revision or codification bill, it is not necessary to list all affected sections in the title.

EXAMPLE "AN ACT TO GENERALLY REVISE THE LAWS
RELATING TO AERONAUTICS."

If a bill repeals a section, the title should indicate the subject matter and list the section number.

EXAMPLE

"AN ACT TO REPEAL SECTION 1-1-202, MCA,
WHICH DEFINES REGISTERED MAIL."

(6) Including Effective Dates in Title

It is good drafting practice to include special effective dates in the title such as:

EXAMPLES

PROVIDING AN IMMEDIATE EFFECTIVE DATE;

PROVIDING A DELAYED EFFECTIVE DATE; or

PROVIDING AN EFFECTIVE DATE OF JANUARY 1,
1986.

If a specific effective date is not provided, an appropriation statute becomes effective on July 1 following passage and approval. All other statutes take effect on October 1.

(7) Short Bill Title

Various tools for tracking bills during the legislative session are prepared by Legislative Council and House and Senate staff. The most significant of these tools is the daily status of introduced bills. Beginning in 1985, the daily status will be cumulative in that it will provide a history of all actions taken on each bill, as opposed to merely providing the most recent action. The format for the cumulative daily status requires use of a shortened title of 76 characters (letters, hyphens, and spaces between words) or less. Each bill drafter should write a short bill title, using the form at Appendix P, and attach it to the draft submitted to the Legislative Council. The short bill title may include abbreviations; sections repealed and amended and the formal introduction ("A BILL FOR AN ACT ENTITLED: AN ACT") may be omitted.

4-5 Preamble

The preamble follows the title and precedes the enacting clause. Because of its placement, it does not become a part of the law. It is a preliminary statement of the reasons for the enactment of the law and begins with the word "Whereas".

PREAMBLE

(optional)

WHEREAS, the Montana Constitution requires that all executive and administrative offices and instrumentalities of the executive branch of state government be allocated by law among not more than 20 departments

(See discussion of purpose sections below.)

4-6 Enacting Clause

The enacting clause, which is prescribed by law, separates the identification portion of the bill from the body of the bill.

ENACTING CLAUSE BE IT ENACTED BY THE LEGISLATURE OF THE
(mandatory) STATE OF MONTANA:

4-7 Short Title

A short title is not suitable for all enactments; but whenever an act creates new law in a definable area, a short title enables quick future identification. When used, the short title appears as section 1 of the bill.

SHORT TITLE Section 1. Short title. [This act]
 may be cited as the "Executive
 Reorganization Act of 1971".

4-8 Purpose Section

Courts have relied on purpose sections to construe unclear and ambiguous language. Of course, clear and unambiguous language is always preferred to reliance on a purpose section. A well-drafted act should not require an extraneous statement to recite reasons for its enactment or what it seeks to accomplish. However, occasionally it is necessary to express the reason prompting enactment or the policy or purpose of an act. A good example is when the statute imposes a burden on a particular class of persons, thus requiring at least a rational basis for treating them differently from other persons. In Oberg v. City of Billings, M, 674 P2d 494, 40 St. Rep. 2034 (1983), the Montana Supreme Court stated that "While the courts are seldom concerned with the wisdom of legislation, the purpose of the legislation is of vital concern where the constitutionality of a statute is challenged as a denial of equal protection." If the reason, policy, or purpose must be stated, first consider the preamble, which does not take up space in the Code because it is not part of the act itself but which may be used in its interpretation. (Preambles are set out in compiler's comments to appropriate code sections, parts, or chapters.) If a purpose section is preferred to a preamble, it becomes a part of the law. The purpose should be stated concisely at the beginning of the bill following the enacting clause or short title if there is one. If a purpose section is necessary, it should be carefully and thoughtfully drafted. (See also the discussion of statements of intent in Chapter 6.)

4-9 Definitions

(1) To avoid repetition and to assure clarity, a well-drafted bill often contains a definition section that precedes the basic provisions of the bill. A definition

section is of definite advantage to:

(a) define a general term in order to avoid its frequent repetition, such as "'Employee deductions" means all authorized deductions made from the salary and wages of an officer or employee of a state agency";

(b) avoid repeating the full title of an officer or of an agency, such as "'Board" means the board of natural resources and conservation";

(c) give an exact meaning to a word that has several dictionary meanings;

(d) define a technical word that has no popular meaning in commonly understood language; and

(e) limit the meaning of a term that, if not defined, would have a broader meaning than intended.

(2) (a) Do not define a word if it is used in the sense of its ordinary dictionary meaning.

(b) Certain words are defined in Title 1, chapter 1, MCA. If a word is used in the same sense as it is defined in that chapter, it is unnecessary to define it again in a bill. There are also definition sections that apply to entire titles, such as section 45-2-101, MCA (Criminal Code), or to several chapters, such as section 72-1-103, MCA (Probate Code).

(3) The drafter should adhere scrupulously to normal usage of a term. If it is necessary to use a fiction, it should be so labeled.

EXAMPLE Do not say: The word "automobile" includes trucks, power boats, and airplanes.

 Say: In this chapter, trucks, power boats, and airplanes are treated as if they were automobiles.

(4) Whenever possible, especially if there are more than three definitions, they should be arranged alphabetically.

(5) Do not include substantive provisions in definition sections.

(6) After a word is defined, use the defined word, not the definition.

(7) If there are definitions already in the Code that you want to apply to your bill, draft a provision so stating (e.g., "seriously mentally ill, as defined in 53-21-102").

Don't refer to the subsection in which the definition is contained, such as "53-21-102(14)", because definition sections are almost always in alphabetical order and subsections are often renumbered), or if appropriate, draft a codification instruction incorporating the new act into the chapter or part of the Code where the definitions are contained. Do not repeat the definitions. (See discussion in section 4-18.)

(8) Do not define a word that is never used in the bill!

DEFINITIONS

Section 3. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other similar entity.

4-10 Basic Provisions

A bill that only amends or repeals existing laws may not present any organizational problem; sections of the Montana Code Annotated usually are amended in numerical order. However, an act that creates a new body of law must be thoughtfully organized. From the standpoint of organization, bills containing all new material are of three types. Those bills may contain:

(1) one main provision supported by subordinate provisions;

(2) several related main provisions, some of which have subordinate provisions; or

(3) a series of related and equal provisions all dealing with one subject.

(1) One Main Provision

Most new legislation is concerned with just one main idea and falls within the first type. Generally, the substantive provisions of an act will be followed by the authority that is to administer it and then by the means to make it effective.

EXAMPLE
("core" or
substantive
provision)

Section 4. Registration of tramways required. No passenger tramway may be operated in this state unless it is registered with the board

Section 5. Powers and duties of the board. The board shall:

(1) adopt rules to implement the provisions of [sections 1 through 12];

(2) hold hearings relating to the granting, suspension, or revocation of the registration; and

(administrative
authority and
procedures. Do
not include
unnecessary
procedural
provisions that
are already
contained in
the Montana
Administrative
Procedure Act
or court rules.)

(3) grant registration and issue registration certificates to applicants who have complied with [sections 1 through 12] and rules adopted under [sections 1 through 12].

Section 6. Remedies to enforce compliance. If an operator fails to comply with an order or rule of the board, the board may:

(1) suspend or revoke the registration of the tramway ...;

(administrative
enforcement
procedure)

(2) bring injunctive proceedings

(2) Several Related Main Provisions

Each main provision with its related subordinate divisions should be separate from the other main provisions and drafted in detail as if it constituted the entire bill.

(3) Series of Related and Equal Provisions

Bills containing equal provisions relating to a common subject are arranged in a logical order.

4-11 New Material -- Catchlines

Provisions used to create new law in an area not covered by present statutes are referred to as "new material". The basic provisions of a new law should be divided into sections, each of which contains one idea or thought.

Each section must begin with a caption or "catchline".

With the exception of the Uniform Commercial Code, catchlines are not part of the law (see sections 1-11-103 and 30-1-109, MCA). In the past, catchlines usually were added by the codifier, but the present rule is to add a catchline during the drafting process for convenience and readability. (Should a bill be enacted without catchlines, the Code Commissioner staff will add the catchlines when the new sections are codified.) The catchline should be as brief as possible and clearly show what the section topic is. If the drafter feels that the catchline must be quite long to cover the meaning of the section, the section itself is probably too broad. If more than one thought is set forth in a catchline, each thought is separated by a dash. The catchline should not be a complete sentence.

In new material, internal references to other sections of the bill that are new sections should be bracketed. The Code Commissioner staff will insert the proper code section number before the code is printed. (See section 4-18 for a discussion of how the placement of new material in the Code is determined.)

NEW SECTION

Section 4. Department head --
appointment -- powers and duties.
(1) The governor shall appoint each
department head.

(2) Each department head shall
supervise, direct, account for, organize,
plan, administer, and execute the
functions vested in the department in
accordance with 86-1-101, 86-1-102, and
[section 20].

4-12 Amendatory Material

Sections of a bill amending present law usually are arranged in numerical order by code section number. There must be a separate bill section for each code section amended. The brief, simple amending clause should be used. ("Section _____, MCA, is amended to read:") The Joint Rules provide: "In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined." This means that new material added to an existing code section is underlined; new material that will become an entirely new code section is not underlined.

AMENDATORY MATERIAL (amending a code section)

Section 5. Section 2-17-301, MCA, is
amended to read:

"2-17-301. Supervision of mailing
facilities. The controller department
shall maintain and supervise any central
mailing facilities."

The Joint Rules also provide: "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length." The question of whether a subsection may be amended without setting out the entire parent section at length has never been adjudicated in Montana. (Ease of amendment is just one more reason for dividing new law into short, concise sections.) At present the computerized updating of the statute data base requires that an entire section be amended, not just a subsection. As noted earlier, all bills not prepared by the Legislative Council staff must be reviewed by the Council staff and entered on the automated bill drafting system before introduction. The Council staff prefers that all bills submitted for review that amend existing MCA sections present those amendments in "cut-and-paste" form, using the most recent version of the MCA; this saves both Council staff and outside clerical staff time and, because of the Council's computerized code data base, is less prone to error than retyping.

If it is necessary to amend a session law, the drafter must refer to the session law chapter number. (See Appendix E for example of bill amending session law.)

The Secretary of State assigns chapter numbers to the laws after they are signed by the Governor. (See section 5-11-204, MCA.)

4-13 Designating New Material Mixed With Amendatory Material

Whenever a bill contains one or more sections amending present statutes and contains a section with all new material, it is necessary to call this to the attention of the Legislature. When a legislator is reading several sections containing underlining or deletions, he tends to read only the underlined or deleted material. Unless attention is called to new material in the midst of such amendatory material, the new material is often overlooked. The former method of introducing such sections with the phrase "There is a new R.C.M. section that reads as follows" did not seem to alleviate this problem.

The present method uses the words "NEW SECTION" in all caps at the beginning of the new sections and uses no introductory phrase.

DESIGNATING NEW MATERIAL (mixed with amendatory material) NEW SECTION. Section 4. Catchline.

"NEW SECTION" is used only in bills mixing new material with amendatory material. In such bills, it is used at the

beginning of all nonamendatory sections, including repealers and effective dates.

4-14 Short Form Amendments

To effect a single name change and transfer of functions from one agency to another involving numerous code sections, the short form amendment may be used to save considerable time and expense. After finding all code sections where the name change is necessary, the following form may be used:

**SHORT FORM
AMENDMENT**

Section 1. Functions transferred -- name change. (1) The functions of the department of agriculture contained in Title 80, chapter 20, 80-31-102, 80-31-110, 80-32-121 through 80-32-127 [list all code sections, parts, and chapters], which functions relate to the alphabetizing of animal brands, are transferred to the department of livestock.

(2) In the provisions of the Montana Code Annotated listed in subsection (1), the term "department of agriculture" or "department", meaning the department of agriculture, is changed to "department of livestock" or "department", meaning the department of livestock.

4-15 Outline Form

There is no rule fixing the length of a section. Generally, a section should include only a single idea. The shorter the section, the more quickly it may be understood and the easier it is to amend if amendment is needed. If the drafter finds it difficult to phrase a brief catchline for the section, it is likely that there are too many ideas in the section. Each paragraph in a bill should be given a section or subsection designation. Outline order for subsections is as follows:

- (1) If (1) is used, there must be a (2).
- (2)
- (3)
- (a) If (a) is used, there must be a (b).
- (b)
- (c)
- (i) If (i) is used, there must be a (ii).
- (ii)
- (iii)
- (A) If (A) is used, there must be a (B).
- (B)
- (C)
- (4)

Only the second-to-last item of a series should have an "and" or an "or" (e.g., (a), (b), or (c)).

Sections or subsections are indented except when the (1) follows the catchline. If there is a phrase or sentence following the catchline that ends with a colon and is followed by a (1), that (1) is indented.

EXAMPLES

22-1-101. Duties of board. (1) The board shall adopt rules related to public safety

.... (2) The board shall hold hearings

22-1-101. Duties of board. The board shall:

(1) adopt rules related to public safety;

(2) hold hearings; and

(3) arrange all meetings.

When a complete sentence follows a dependent clause within a subsection, the dependent clause and the sentence end with periods.

EXAMPLE

The board shall:

(1) adopt rules related to public safety;

(2) hold hearings. The hearings may not be longer than 1 hour in duration.

(3) arrange all meetings.

If material preceding a colon is a complete thought and each of a numbered (and indented) series can stand alone, the first letter is capitalized and the sentence ends with a period. Otherwise, the first letter is in lowercase and the sentence ends with a semicolon; if some but not all of the first letters must be capitalized (for instance, "Montana"), try to rearrange those phrases so that they begin with a lowercase word.

EXAMPLES

4-1-101. Definitions. As used in this part, the following definitions apply:

(1) "Bonds" includes all instruments representing indebtedness, the borrowing of money, or a charge on specific revenue.

(2) "Public body" means any political or governmental subdivision of the state.

4-1-101. Budget amendment. An approved budget amendment is an approval by the budget director of a request submitted through the budget division to:

- (1) obtain financing;
- (2) transfer excess funds; or
- (3) increase the appropriation.

If possible, include all identical language in the section in the lead-in phrase before the colon. Do not repeat it in each subsection.

EXAMPLES
(identical language in
(1)(a) through
(1)(c) and
(2)(a) and
(2)(b)
redundant)

17-7-201. Building and construction defined. In this part the following definitions apply:

(1) "Building" includes a:

(a) building, facility, or structure constructed or purchased wholly or in part with state money;

(b) building, facility, or structure at a state institution; or

(c) building, facility, or structure owned or to be owned by a state agency, including the department of highways.

(2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district; or

(b) building, facility, or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

(preferred style)

17-7-201. Building and construction defined. In this part the following

definitions apply:

(1) "Building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

(b) at a state institution; or

(c) owned or to be owned by a state agency, including the department of highways.

(2) "Building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district; or

(b) used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

Be extremely careful when inserting subsections. Often a meaning can be altered substantially if subsection numbers are carelessly inserted. See the following example. The mathematical computation is entirely different in the two versions.

EXAMPLES
(wrong)

The holder may charge an amount equal to the difference between:

(1) the refund required under 31-1-242; and

(2) the refund required for payment in full as of 1 month prior to the due date times the number of months in which no payment was made.

(right)

The holder may charge an amount determined as follows:

(1) Calculate the difference between:

(a) the refund required under 31-1-242; and

(b) the refund required for payment in full as of 1 month prior to the due date.

(2) Multiply the difference by the number of months in which no payment was made.

4-16 Penalty

If a violation of an act is to result in a penalty, a separate section is devoted to setting forth the penalty. The wording of this section is patterned after that used in the Montana Criminal Code of 1973.

PENALTY

Section 8. Penalty. A person convicted of violating 1-1-101 shall be fined no more than \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

4-17 Repealer

It may be necessary to repeal one or more statutes that conflict with a new act. Each statute to be repealed must be identified. If three or more consecutive code sections are to be repealed, the drafter should use the word "through" to indicate the series. If an entire chapter or part is to be repealed, it is still best to use the "through" form because to say "chapter 7 is repealed" implies that no future law may be codified in chapter 7.

A statement that "all acts or parts of acts in conflict herewith are repealed" is improper and ineffective.

Whenever a bill repealing a section is drafted, the same bill must amend any other section in the Code containing a reference to the section being repealed. The Legislative Council has a complete listing of all internal references. (See section 1-7.)

REPEALER

Section 9. Repealer. Sections 1-1-101 through 1-1-106 and 3-4-102, MCA, are repealed.

4-18 Code Placement and Applicability -- Codification Instructions

(1) Placement

The drafter is cautioned not to assign code section numbers to new material or to renumber existing code sections because of the possibility of the same number being assigned to more than one section and because logical

placement cannot be determined until all the legislation passed during a session is studied as a whole. However, the drafter must decide where he thinks his proposed law should be placed and express this intent by attaching a "Suggested Assignment of Statute Numbers" form to his bill draft. (See Appendix Q.)

It may be necessary to express this intent in the bill itself in a section giving instructions to the Code Commissioner to codify the section in a given chapter or part. (See discussion and example below.)

(2) Applicability

Often it is not enough merely to suggest where a section should be codified. In many instances, it is vital that the drafter express the intent to incorporate present law into new law.

For example, let us assume the drafter is drafting a bill that relates to a chapter of the Code that is arranged as follows:

CHAPTER 1 RINKY DINK AGENCY

Part 1 -- General Provisions

Section

- 1-1-101. Definitions.
- 1-1-102. Rulemaking authorized.
- 1-1-103. Injunction authorized.
- 1-1-104. Penalties.

Part 2 -- Certificates and Permits

- 1-1-201. Certificate or permit required.
- 1-1-202. Application.
- 1-1-203 through 1-1-206 reserved.
- 1-1-207. Hearings.
- 1-1-208. Appeals.

The drafter's bill is concerned with findings necessary for issuance of a certificate. After studying chapter 1 carefully, the drafter determines that his one-section bill should be codified as 1-1-203. However, in order to so codify the section, the Code Commissioner may be forced to make additional changes in several sections unless the bill itself shows an intent to incorporate the new law into the present law.

For instance, if in our hypothetical chapter, 1-1-101 (Definitions) or 1-1-104 (Penalties) contains language such as "as used in this chapter", the following definitions

apply" or "Violation of this chapter is a misdemeanor", it could be an error to insert new law into the chapter without excepting it from the definition and penalty sections, and the Code Commissioner would be required to add excepting language. Mere placement would appear to apply the penalty and definitions to the new section when the Legislature had not expressed an intent that they apply.

If the intent is to have the penalty and definition apply, the drafter must insert a section in his bill to indicate this intent. (See example below.)

(3) Codification Instructions

Present law may by reference be incorporated into a bill by use of a codification instruction. To avoid repeating definitions, rulemaking authority, penalties, and other substantive law, etc., and to insure that an established body of law with its previously construed terms will apply to new law, a codification instruction is essential. Whenever a bill contains new sections, either a codification instruction should be included in the draft or a "Suggested Assignment of Statute Numbers" form should be attached, whichever is appropriate.

CODIFICATION INSTRUCTION

Section 13. Codification instruction.
Sections 1 through 5 are intended to be codified as an integral part of Title 2, chapter 6, part 7, and the provisions of Title 2, chapter 6, part 7, apply to sections 1 through 5.

A codification instruction may also be used to effect renumbering and reintegrating of code sections into a different chapter or part of the Code.

EXAMPLE

Section 13. Codification instruction.
Sections 20-25-901 through 20-25-903 are intended to be renumbered and codified as an integral part of Title 19, chapter 4.

4-19 Coordination Instructions

Frequently the Legislature will be considering two bills that conflict with each other. To determine whether a bill has been introduced that conflicts with his current drafting project, a bill drafter may consult the daily status and index thereto. The Legislative Council also makes available a sections amended list, arranged numerically according to MCA number, of all MCA sections proposed for amendment and the bills amending them. The Code Commissioner staff typically prepares about 300 composite sections for each edition of the MCA. Multiple amendments to the same section do not usually represent a conflict; however, most conflicts that do occur arise from such multiple amendments. Assuming other means are not available to resolve such

conflicts (e.g., negotiation between the requestor and the sponsor of the other bill), a coordination instruction may be necessary. A typical coordination instruction will void the conflicting provision in the draft bill if the other bill is passed and approved with the troublesome provision intact.

**COORDINATION
INSTRUCTION**

Section 14. Coordination instruction.
If Senate (House) Bill No. 200 [LC 600], including the section of that bill amending 1-1-101, is passed and approved, section 1 of this act, amending 1-1-101, is void.

4-20 Saving Clause

Because normally it is presumed that changes in the law are in full force from the effective date, new laws often could disrupt transactions already in progress. The saving clause preserves rights and duties that already have matured or proceedings already begun.

SAVING CLAUSE

Section 15. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

If a criminal statute is repealed, unless the act itself contains language to the contrary, section 1-2-205, MCA, applies. It provides that the repeal of a law creating a crime does not bar prosecution for or punishment of an act already committed in violation of that law.

Another method of preserving rights and duties that have matured is to choose a date upon which the persons coming within the act must comply with its operative provision.

EXAMPLE

Section 15. Act operative on January 1, 1984. A certificate is not required under [section 10] for any facility under construction or in operation on or before December 31, 1983.

4-21 Severability Clause

If a statute is found to be unconstitutional or invalid in part, the court must decide if the invalid portion is severable from the valid portion and looks to legislative intent. The Montana Supreme Court has held that inclusion of a severability clause in a bill creates a presumption that the valid portions of a bill would have been enacted without the invalid portions (Bacus v. Lake County, 138 M 69, 354 P2d 1056, 1083) and thus only the invalid portions are voidable. As a rule, severability clauses are not codified.

**SEVERABILITY
CLAUSE**

Section 16. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

4-22 Nonseverability Clause

In the rare instance that the sponsor intends that the entire act should fall if one of the provisions is declared unconstitutional, a nonseverability clause may be added.

**NONSEVERABILITY
CLAUSE**

Section 16. Nonseverability. It is the intent of the legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid.

4-23 Application Date

Do not confuse application date with effective date. A bill may become effective on passage and approval or on October 1 but apply retroactively or prospectively. To apply retroactively, a law must expressly so state (section 1-2-109, MCA).

APPLICABILITY

Section 17. Applicability. Sections 1 through 5 and sections 7 through 9 apply retroactively, within the meaning of 1-2-109, to all occurrences after December 1, 1983.

OR

Section 17. Applicability. This act applies to taxable years beginning after December 31, 1985.

4-24 Effective Date

Section 1-2-201(1), MCA, provides: "Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein." Passage and approval means the time that a measure is either signed by the Governor or that it becomes automatically a law if not signed within the prescribed time. An effective date should

not be included in a bill unless the sponsor wants to delay the effective date, there is an emergency requiring an early effective date, the bill has fiscal impact necessitating a July 1 effective date (see Bills With Fiscal Impact, section 6-1), or the bill grants rulemaking authority that must be exercised prior to October 1 (see Bills Granting Rulemaking Authority, section 6-2). An effective date before October 1 may deprive the general public of sufficient notice and deprive administrators of the act of sufficient time to prepare procedures for the new act. (See also section 13-27-105, MCA, for effective date of an initiative or referendum.) A specified effective date should be mentioned in the bill title.

EFFECTIVE DATE

Section 18. Effective date. This act is effective December 1, 1985.

OR

Section 18. Effective date. This act is effective on passage and approval.

OR

Section 18. Effective date. This act is effective July 1, 1985.

Occasionally, it is desirable to make only a portion of the act effective before October 1. In such a case, it is essential to make sure that the effective date section is itself made effective on the earlier date. An effective date section that doesn't itself become effective until October 1 cannot operate until October 1 and therefore cannot make other provisions of the act effective before October 1.

WRONG/INOPERATIVE

Section 18. Effective date. Sections 3, 5, and 7 are effective on passage and approval.

RIGHT/OPERATIVE

Section 18. Effective date. Sections 3, 5, and 7 and this section are effective on passage and approval.

CHAPTER 5

SPECIAL TYPES OF BILLS

5-1 Validating Bills

A validating bill is used to cure any irregularities in actions, proceedings, or transactions carried out under authority of existing law. A bond validating act is passed each session by the Montana Legislature. This type of bill may be used to validate other types of actions (such as approval of plats, distribution of revenues according to a prior census, petitions for creation of districts, etc.) as long as it does not impair the obligation of contracts or disturb a vested right.

In the past, bond validating acts have broken all rules concerning style and language in legislative drafting. It is not necessary to continue to use archaic, flowery language. (See Appendix G for a sample validating act.)

5-2 Interstate Compacts

An interstate compact is a contract among several states that is enacted into law in each contracting state. A compact must be enacted in substantially the same form in each party state. For example, the drafter may inspect the several interstate compacts adopted by Montana, such as the Driver License Compact (section 61-5-401, MCA), Compact on Juveniles (section 41-6-101, MCA), Library Compact (section 22-1-601, MCA), and Mental Health Compact (section 53-22-101, MCA).

5-3 Uniform or Model Acts

(1) Uniform acts are prepared by the National Conference of Commissioners on Uniform State Laws and generally are intended to be followed exactly in substance. The purpose of a uniform act is to cover an area of law by a method that will avoid conflicts among the laws of different states. An example is the Uniform Reciprocal Enforcement of Support Act, Title 40, chapter 5, part 1, MCA.

(2) Model or "suggested" acts are prepared by the drafting committee of the Council of State Governments and by other persons and organizations and are intended as guides for legislation in which uniformity is not necessary. A model act is essentially a suggested method for handling a given area of law by providing guidelines within which a state may substitute sections to accommodate local peculiarities. An example is the Montana Business Corporation Act, Title 35, chapter 1, MCA. Copies of the publication Suggested State Legislation by the Council of State Governments are available in the Legislative Council library.

5-4 Appropriation Bills

Article V, section 11(4), of the Montana Constitution requires every appropriation other than general appropriations for the operation of government to be "made by separate bill, containing but one subject". (See also discussion of general appropriation bills in section 4-4(3).) The large general appropriation bills covering the usual expenses of state government are prepared in accordance with a predetermined format. (See Appendix F for sample format.)

EXAMPLES

Section 1. Appropriation. The following money is appropriated from the general fund to the board of bill drafting to fund publication of the Bill Drafting Manual:

Fiscal year 1986.....	\$65,720
Fiscal year 1987.....	\$69,280

Section 1. Appropriation. The following money is appropriated from the account established by 69-1-223 to the office of the Consumer Counsel:

Fiscal year 1986.....	\$200,000
Fiscal year 1987.....	\$300,000

The Montana Supreme Court has held that an appropriation may be part of a nonappropriation bill without violating the unity of subject rule if the appropriation is incidental to the single subject of the bill (Hill v. Rae, 52 M 378, and St. v. St. Bd. of Educ., 97 M 132). For example, if a bill creates a governmental agency or program, a section of the bill appropriating money to fund the program would be proper. However, the most recent (and probably the safest) practice has been to create the new entity and provide for necessary administrative procedures, etc., in one bill and appropriate the necessary money therefor in a separate bill.

5-5 Constitutional Amendments

Article XIV, section 8, of the Montana Constitution provides for constitutional amendment by legislative referendum. The proposed amendment must receive an affirmative vote by two-thirds of the Legislature before it is referred to the people. Article VI, section 10, provides that bills proposing amendments to the Montana Constitution need not be submitted to the Governor for his signature. Title 13, chapter 27, MCA, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment (and other ballot issues) to the electorate. Article XIV, section 8, provides that, unless the amendment provides otherwise, the amendment will become effective on July 1 following certification of the election returns.

5-6 Referenda

Article III, section 5, of the Montana Constitution provides that the people may approve or reject by referendum any act of the Legislature except an appropriation of money. The Legislature may order a proposed law to be voted upon by the people, or the people may petition to so vote. An "act" does not include a joint resolution ratifying an amendment to the United States Constitution (Hatch v. Murray, 526 P2d 1369).

Section 13-27-313, MCA, provides that the Attorney General must approve the form of the referendum ballot. When the Legislature orders an act to be referred to the people, the Secretary of State sends a copy of the proposed law to the Attorney General (section 13-27-310, MCA) so that the Attorney General may write his explanatory statement of the measure. At the same time the Secretary of State asks the Attorney General to approve the ballot form, which is usually prescribed in the act ordering the referendum. Title 13, chapter 27, MCA, Ballot Issues, was generally revised and updated in 1979. The drafter should become acquainted with that chapter.

Usually, the last section of a bill for a referendum is the section ordering a vote of the people. (See Appendix I for a sample referendum bill.)

CHAPTER 6

BILLS WITH SPECIAL PROVISIONS

6-1 Bills With Fiscal Impact

Section 5-4-201, MCA, provides that no bill having an effect on revenues, expenditures, or the fiscal liability of the state or a local government may be reported out of committee without an attached fiscal note estimating the dollar amount of the fiscal impact. The fiscal note requirement does not apply to an appropriation bill carrying a specific dollar amount.

When a bill is reviewed by the Legislative Council staff prior to introduction, its possible fiscal impact is considered. If a fiscal note appears to be needed, a stamp so indicating is affixed to the bill and signed by the Executive Director of the Council. At the time a bill is introduced, the President of the Senate or the Speaker of the House must determine whether the bill needs a fiscal note. The notation of the Legislative Council helps save the presiding officer time in determining if a fiscal note should be ordered. When he determines the need for a fiscal note, the presiding officer requests it from the Budget Director, who is required by law to return the note within 6 days.

The drafter can simplify the process of judging fiscal impact by keeping the fiscal note requirement in mind when drafting bills and indicating on the bill draft that a fiscal note may be required. (See Bill Drafter Checklist, Appendix R.)

The fiscal note is attached to the bill, and the committee considers it with the bill. If a bill is introduced without a request for a fiscal note, the sponsor, the committee considering the bill, or the majority of the house considering the bill on second reading may request the presiding officer to request a fiscal note.

A bill's fiscal impact may also necessitate the inclusion of a special effective date. Under section 1-2-201, MCA, unless a different time is prescribed, all bills except appropriation bills are effective on October 1 following passage and approval; appropriation bills become effective on July 1 (see Effective Date, section 4-24). Frequently, a nonappropriation bill will have such an impact on local or state finances as to make it highly desirable to provide an effective date that coincides with the beginning of the fiscal year (usually July 1). See 39 A.G. Op. 29, discussing the problems associated with a bill increasing the county road tax levy without providing a July 1 effective date.

Sections 1-2-112 and 1-2-113, MCA, are also concerned with fiscal impact. These statutes require that any law directing a local government unit or school district to perform an activity or provide a service or facility that will require additional funds contain a specific means of financing such activity or service. Therefore, a drafter must be careful, when drafting bills concerning additional local government or school district services or activities, to include provision for an additional mill levy or remittance of state funds sufficient to fund the new activity. The statute provides that such a law is not effective until this specific means of financing is provided.

6-2 Bills Granting Rulemaking Authority

1. In highly complex, technical fields where the degree of specificity required is not considered appropriate for comprehensive statutory treatment or when interim authority is necessary to provide for continuing compliance with ever-changing federal law and regulations, the requestor may wish to delegate rulemaking authority to an executive branch agency. Rules have the force of law (i.e., an enforceable prohibition or mandate of behavior or activity) only if:

(a) adopted under an express grant of legislative authority;

(b) adopted under statutory guidelines sufficiently specific to satisfy the constitutional separation of powers requirement for a delegation of rulemaking authority;

(c) adopted in compliance with the procedures outlined in Title 2, chapter 4, part 3, MCA; and

(d) consistent with and reasonably necessary to effectuate the purpose of the implemented statutes (section 2-4-305(6), MCA).

2. Items (a) and (b) above are most significant from the bill drafting standpoint. An express grant of rulemaking authority is created for a new body of law by stating substantially that "The department may [shall] adopt rules to implement [sections 1 through 12]". An existing program that already includes an express grant of rulemaking authority may be modified or expanded by amendment of MCA sections to which the existing express grant of authority applies or by enactment of a new bill section along with a codification instruction making the existing authority apply to the new bill section (see Code Placement and Applicability, section 4-18). Section 5-4-402(3), MCA, enacted in 1983, prohibits use of the existing rulemaking authority to implement such an amendment or new section unless the bill includes an extension of the existing authority to the amendment or new section. An extension of authority section should read substantially as follows:

EXAMPLE

Section 10. Extension of authority.
Any existing authority of the department

of _____ to make rules on the subject of the provisions of this act is extended to the provisions of this act.

3. A mere implication of power to adopt rules gleaned from implemented statutes because of a perceived necessity for rules is not sufficient to allow legislative rules, i.e., rules having force of law (section 2-4-102(11)(a), MCA). Moreover, even a clearly expressed grant of rulemaking authority will be ineffective if it is so broad and unrestricted as to constitute an unconstitutional delegation of legislative authority.

4. Basic policy and guidelines must be determined by the Legislature as set forth in statutory restrictions, standards, and criteria to be followed by the agency in adopting rules. For further discussion of constitutional problems related to delegation of authority and separation of powers generally, see Chapter 1.

5. In an area in which the agency does not have existing rulemaking authority, if it is necessary to initiate rulemaking proceedings before the normal October 1 effective date (see discussion of the effective dates at section 4-24), the express rulemaking authority section and all sections of the bill to be implemented through such authority should be made effective before the time when initiation of rulemaking proceedings is contemplated.

6. A bill may also specifically repeal or direct amendment or adoption of an administrative rule (see section 2-4-412, MCA; Appendix J).

6-3 Statements of Intent

Section 5-4-404, MCA, enacted in 1977 (Ch. 560), provides that the Legislature must enact a Joint Rule which sets forth a procedure "by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the Legislature which sequentially considers the subject bill, and may be amended in the same manner as the bill." The 1979 Legislature first adopted such a rule. (See Chapter 11 of the Joint Rules.) The following key language appears in Rule 11-1 of the Joint Rules:

"This statement differs from a purpose clause which is used in general to describe the broad overall objectives of a bill while a statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples or other matter inappropriate for expression as statutory language."

The statement of intent is a vehicle by which the Legislature may provide a detailed analysis of the problems that stimulated the bill's introduction and enactment and the approach that the state agency is expected to take in resolving those problems. (See statements of intent appearing in compiler's comments in MCA annotations for sections 37-4-321, 37-50-203, and 37-65-306, MCA.) The statement should clearly delineate the subject matter of rules anticipated by the Legislature with a view toward avoiding excessive executive branch agency discretion.

The statement should not, however, be viewed as a substitute for sufficient statutory guidelines; that is, an agency should not be given a very broad grant of authority in the bill with only the statement of intent providing guidelines for exercise of discretion. The statement is not enacted as part of the law itself, and a problem of overdelegation of legislative authority could still be created if the enacted bill does not itself provide sufficient standards and criteria to guide the agency in its administration of the act.

Since the statement of intent is not part of the law, a provision in the statement that purports to act as a rule of law mandating or prohibiting certain actions or imposing a condition or limitation is likely to be ineffective. See 39 A.G. Op. 68 (1982), in which the Attorney General ruled that a fee increase provided by statute must be collected even though the statement of intent purported to condition collection upon enactment (in a different bill) of an appropriation for an additional agency employee whose salary and expenses would be paid through the fee increase.

Since each component of the Legislature that considers the bill must also consider the statement of intent, the standing committee of the house in which the bill originates is responsible for the initial preparation and adoption of the statement. (See Joint Rule 11-3(2).) If a bill requires a statement of intent, the bill drafter should provide the sponsor of the bill with a draft statement of intent to propose to the standing committee at the time of the committee hearing on the bill. This will insure compliance with section 5-4-404, MCA, and the Joint Rules, thereby protecting the intended grant of authority; it may also save considerable time while providing the committee with important information on the purpose and practical implications of the proposed bill. This in no way implies that the standing committee is not fully responsible for the content of the statement which it finally adopts and attaches to its committee report. Further, under the law and the Joint Rules, each component of the Legislature that considers the bill must carefully consider the statement of intent and confirm or amend it, as desired.

6-4 Bills Creating a New Agency

In the Montana Code Annotated, Title 2, Government Structure and Administration, chapter 15 entitled "Executive Branch Officers and Agencies", is an updated and more complete version of R.C.M. 1947, Title 82A, Executive Reorganization. This chapter contains a reference to each agency in the executive branch created by statute. The intent of continuing this chapter is that a code user interested in knowing how the executive branch is structured statutorily may see that structure by merely glancing at the outline of Title 2, chapter 15, MCA. Therefore, in the MCA, the creation of an agency is separated from the functions of that agency.

Whenever an executive branch agency is created by bill, one or more sections should deal with its creation and internal organization. These sections will be codified in Title 2.

In addition the bill must contain a definition section that includes a definition of the new agency.

EXAMPLE Section 2. Definitions. In
[sections 2 through 12], the following
definitions apply:

(1) "Board" means the board of dogcatchers provided for in [section 1].

(2) "Dogcatcher" means

In this example, "[sections 2 through 12]" will be changed to "this chapter", "this part", or "sections through _____" (MCA), as appropriate, and "[section 1]", which creates the board, will become a code section number in Title 2, chapter 15, MCA. The definition section will be codified along with the part of the bill dealing with the functions, powers, and duties of the new agency.

The same rule applies to the creation of any new legislative or judicial branch agency. For example, the composition, terms, and officers of the Environmental Quality Council are provided for in Title 5, MCA, Legislative Branch, because the Council is a legislative agency. However, the functions of the Council are codified in Title 75, MCA, Environmental Protection. (See sections 5-16-101 through 5-16-105, MCA, and sections 75-1-301 through 75-1-324, MCA.)

Whenever a drafter is dealing with a change of an agency's functions or duties, the statutes relating to the creation and composition of the agency must be checked as well as the substantive area of the law.

CHAPTER 7

RESOLUTIONS

The only type of instrument other than a bill that may be introduced in either house of the Legislature is a resolution.

7-1 Simple Resolution

The Joint Rules define a simple resolution as a formalized motion passed by one house only. It may be used to amend the rules of or to provide for the internal affairs of the house adopting it. A simple resolution does not require three readings or a roll call vote as does a bill or joint resolution.

7-2 Joint Resolution

A joint resolution is effective upon passage by both houses and need not be submitted to the Governor for his signature (Article VI, section 10, Montana Constitution). Some common uses of joint resolutions are to:

(1) send a request or instruction to a state agency, Congress, or the President;

(2) express sympathy to relatives of a deceased legislator;

(3) amend or adopt Joint Rules;

(4) ratify or propose amendments to the U.S. Constitution;

(5) request repeal, amendment, or adoption of executive branch administrative rules (section 2-4-412, MCA);

(6) express support for or disapproval of federal legislation;

(7) prescribe duties, compensation, etc., of legislative employees;

(8) request an interim study (section 5-5-217, MCA);
or

(9) approve construction of a state building (sections 18-2-102 and 20-25-302, MCA).

The law provides that disasters and emergencies be dealt with by the Legislature by joint resolution (sections 10-3-302(3), 10-3-303(3) and (4), 10-3-505(5), and 90-4-310, MCA). A negotiated labor settlement may also be submitted by joint resolution (section 39-31-305(3), MCA).

Resolutions do not have the force of law. In Gildroy v. Anderson, 507 P2d 1069, the Supreme Court said, "The effect and validity of a joint legislative resolution must be decided upon a consideration of the purpose intended to be accomplished and in light of the applicable provisions of the Montana Constitution." The court went on to say, "A joint resolution is not a general law and cannot be used to control the discretion of the governor."

The format of resolutions has been prescribed by custom. In resolutions, it would seem that even the unity of subject rule need not be followed, since the resolution does not have the binding effect of a law. Customary formats are presented in the appendix and must be followed by the drafter.

The preamble of a resolution is identical to the preamble of a bill. It usually begins with "WHEREAS" and states the purpose of or reason for the resolution.

In a resolution, a resolving clause takes the place of the enacting clause of a bill. In the past, the body of a resolution has consisted of one or more paragraphs, each beginning with the statement "BE IT FURTHER RESOLVED". The drafter may wish to number the paragraphs, as shown in the second example in Appendix M, as an alternative, rather than continue to repeat the rather flowery, archaic language.

Standard capitalization rules are followed when drafting a resolution.

CHAPTER 8

BILL AMENDMENTS

8-1 Introduction

Bill amendments are prepared by the Legislative Council staff, committee staffs, lobbyists, or the legislators themselves. Printed forms are available for use by the standing committees and the committees of the whole. The first draft of an amendment to be presented to the committee should be typed on plain white paper. If the amendment is made by a committee, it is presented in a Standing Committee report, as shown below.

The amendment must identify the specific copy of the bill to be amended, i.e., introduced (white), second reading (yellow), third reading (blue), or reference bill (salmon).

8-2 Reminders When Amending Bills

(1) Amend the title if the amendment to the bill requires change in the title.

(2) Amend the catchline too, if necessary.

(3) If subsection numbers are changed, read the entire bill for internal references to the former subsection numbers. Also check the Internal Reference List unless the provision being amended is a new section. (See section 1-7.)

(4) If additional sections are being repealed, be sure to check the Internal Reference List.

(5) If bill section numbers are changed, check the entire bill for internal references to those sections.

(6) Check the entire bill for any references to terms or figures that are being changed or provisions that are being deleted.

(7) Do not forget that Article V, section 11, of the Montana Constitution states that no bill shall be so altered or amended on its passage through the Legislature as to change its original purpose. If the amendment would reverse the original direction of the bill or enter an entirely new subject area affecting persons who would never have conceived that they might be affected by any amendment to the original bill, a constitutional problem is likely.

8-3 Substitute Bill

If the proposed amendment is very extensive, it may be easier to rewrite the entire bill. This is called a substitute bill. The Joint Rules provide that if the amendment is relevant to the title and subject matter of the

original bill and is so extensive that a standard amendment would be long and difficult to comprehend, the bill may be amended by striking all of the bill following the enacting clause and substituting an entirely new bill. (See Appendix N.)

8-4 Amendment Language Samples

(1) Amend title

1. Title, lines 5 through 7.

Following: "A PERSON"

Strike: remainder of lines 5 through 7 in
their entirety

Insert: "WHO HAS SERVED HIS SENTENCE"

(2) Insert material only

1. Page 1, line 23.

Following: "statement"

Insert: "in simple language"

(3) Insert material following stricken (dashed out) material

1. Page 1, line 7.

Following: "95"

Strike: "four percent (4%) of the payment due"

Insert: "4%"

2. Page 2, line 10.

Following: "12%"

Insert: "12%"

(4) Insert material and renumber

1. Page 4.

Following: line 1

Insert: "NEW SECTION. Section 2. Restrictions on bargaining. Nothing in this chapter requires or allows a board of trustees of a school district to bargain collectively upon any matter other than matters specified in 39-31-305."

Renumber: subsequent sections

2. Page 5.

Following: line 3

Insert: "Section 4. Section 53-6-205, MCA, is amended to read:

"53-6-205. Departmental reports to legislature. The department and---the department-of--institutions shall achieve full implementation of the program, as set

forth in this chapter and related sections,
no later than January 1, 1984.""
Renumber: subsequent sections

(5) Strike and insert columnar figures in appropriation bills

1. Page 12, line 20.
Strike: "45,000 47,000"
Insert: "44,954 46,955"

(6) Strike material only

1. Page 1, line 22.
Strike: "by"

(if there is only one "by" in line 22)

2. Page 2, line 24.
Following: line 23
Strike: "agency"

3. Page 4, line 23.
Following: "public,"
Strike: "the"

(if there is more than one "the" in the line; if
not, use form 1 above)

4. Page 5, line 16.
Strike: "doctor, ~~engineer~~, lawyer, ACCOUNTANT,"

(show material to be stricken exactly as it
appears in the bill)

(7) Strike certain lines in their entirety

1. Page 1, line 21 through line 1, page 2.
Following: "vagrancy."
Strike: line 21, page 1 through line 1, page 2
in their entirety

(8) Strike a long passage, section, or subsection in its entirety

1. Page 1, line 11.
Strike: section 3 in its entirety

2. Page 2, line 24 through line 15, page 3.
Strike: subsection (e) in its entirety

3. Page 4, line 21 through line 5, page 5.
Following: "act" on line 21
Strike: remainder of line 21 through "day" on
line 5, page 5

(9) Strike and renumber subsequent sections or subsections

1. Page 2, lines 1 and 2.
Strike: section 10 in its entirety
Renumber: subsequent sections
2. Page 3, line 21 through line 2, page 4.
Following: line 20
Strike: subsections (a) and (b) in their entirety
Renumber: subsequent subsections
3. Page 4, line 15.
Strike: "(A)"
Insert: "(1)"
Renumber: subsequent subsections

(10) Strike and replace a section or subsection

1. Page 12, lines 5 through 21.
Strike: section 13 in its entirety
Insert: "Section 13. Section 1-1-101 is amended to read:
"1-1-101. Definition of law. "Law" is a"
2. Page 14, lines 7 through 21.
Strike: subsection (c) in its entirety
Insert: "(c) A person who violates this section is guilty of a misdemeanor."

(11) More than one amendment on the same line

1. Page 12, line 23.
Following: "registrant"
Insert: "or licensee"
Following: "proper"
Strike: "inspection"

(12) Correct capitalization

1. Page 13, line 12.
Following: line 11
Strike: "the"
Insert: "The"

(13) Correct punctuation

1. Page 18, line 10.
Following: "desires"
Strike: "."
Insert: ";

(14) Amend a bill as a substitute bill; strike all of the

bill following the enacting clause

1. Title, lines 5 through 15.

Following: "AN ACT"

Strike: lines 5 through 15 in their entirety

Insert: "PROVIDING THAT A PERSON CONVICTED OF A
CRIMINAL OFFENSE WHO HAS SERVED HIS
SENTENCE AND IS NO LONGER UNDER STATE
SUPERVISION MAY BE GRANTED THE PRIVILEGE OF
OCCUPATIONAL LICENSURE; DEFINING LICENSURE
AS A PRIVILEGE."

2. Pages 1 through 52.

Strike: everything following the enacting clause

Insert: "Section 1. Purpose. It is the public
policy of the legislature of the state of
Montana to

Section 2. Licensure defined as privilege.
Licensure is a privilege to be granted or
revoked as a police power of the state

Section 3. Restoration of rights to
felons. Laws for the punishment of crime
must be founded on the principles of
prevention and reformation

Section 4. etc."

8-5 Standing Committee Report

(Examples)

SENATE

Date _____

Mr.

Ms. President

We, your committee on Highways, having had under
consideration Senate Bill No. 123, respectfully
report as follows: That Senate Bill No. 123, second
reading (yellow), be amended as follows:

HOUSE OF REPRESENTATIVES

Date _____

Mr.
Ms. _____ Speaker

We, your committee on Highways, having had under consideration House Bill No. 123 entitled "AN ACT AUTHORIZING RIGHT TURNS AT INTERSECTIONS ON RED OR STOP SIGNALS; AMENDING SECTION 61-8-207, MCA", respectfully report as follows: That House Bill No. 123, second reading (yellow), be amended as follows:

8-6 Conference Committee Report

If the Senate and House cannot agree on an amendment (or series of amendments), either house may request a Conference Committee. The format of Conference Committee reports is determined by the Rules Committee.

(Example)

March 18, 1985

JOINT CONFERENCE COMMITTEE REPORT NO. ____

ON HOUSE BILL NO. 11

MR. (MS.) PRESIDENT AND MR. (MS.) SPEAKER:

We, your Joint Conference Committee on House Bill No. 11, met March 18, 1985, and considered:

1. Senate Committee on Judiciary Amendments to the third reading copy, dated March 5, 1985, and
2. Senate Committee of the Whole Amendments to the third reading copy, dated March 9, 1985.

We recommend that:

1. the Senate recede from Committee amendment numbers 1 through 3 and the House accede to Committee amendment numbers 4, 6, 7, and 8;
2. the Senate recede from Committee of the Whole

amendment number 1 and the House accede to Committee of the Whole amendment numbers 2 and 3;

3. (If it is a Free Conference Committee Report and there are additional amendments to portions of the bill that have not yet been amended, use the following language: House Bill No. 11 be further amended as indicated in CLERICAL INSTRUCTION number 3.)

4. (If it is a Free Conference Committee Report and the recommendation is to partially accept an amendment or to accept it with changes, use the following language: the House accede to Committee amendment number 4, as further amended in CLERICAL INSTRUCTION number 2.)

5. the reference copy of House Bill No. 11 read as specified in the CLERICAL INSTRUCTIONS;

6. the Conference Committee Report to House Bill No. 11 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 5, lines 4 through 17.
Strike: section 6 in its entirety

2. Page 6, line 1.
Following: "tuba,"
Insert: "thumb piano,"

3. Page 7, line 12.
Following: "clarinet,"
Strike: "kazoo,"

FOR THE HOUSE:

FOR THE SENATE:

(Chairman's Name)

(Chairman's Name)

(Name)

(Name)

(Name)

(Name)

8-7 Statement of Intent

The first standing committee that hears a bill is responsible for incorporating a required statement of intent (see Joint Rule 11-3(2)). The accepted form for attaching a statement of intent is to:

(1) type the words "Statement of Intent Attached" between the "Do pass" or "Do pass, as amended" notation and the chairman signature line on the Standing Committee report form; and

(2) type the statement on a separate page with the heading "Statement of Intent Re: SB/HB _____", using the committee report form and attach it behind the committee report.

CHAPTER 9

SELECTED PROVISIONS RELATING TO BILL DRAFTING

The following is a list of constitutional, statutory, and Joint Rule provisions of which a bill drafter should be especially knowledgeable.

9-1 Montana Constitution

Article II. Declaration of Rights

- Section 5. Freedom of religion
- Section 7. Freedom of speech, expression, and press
- Section 12. Equal protection
- Section 18. State subject to suit
- Section 31. Ex post facto, obligation of contracts, and irrevocable privileges

Article III. General Government

- Section 1. Separation of powers
- Section 5. Referendum

Article V. The Legislature

- Section 11. Bills
- Section 12. Local and special legislation

Article VI. The Executive

- Section 10. Veto power

Article VIII. Revenue and Finance

- Section 1. Tax purposes
- Section 2. Tax power inalienable
- Section 6. Highway revenue nondiversion
- Section 8. State debt
- Section 9. Balanced budget

Article XIII. General Provisions

- Section 1(3). No retrospective law

Article XIV. Constitutional Revision

- Section 8. Amendment by legislative referendum

9-2 Montana Code Annotated

Title 1 -- General Laws and Definitions, especially:

Chapter 1, part 2 -- General Definitions Used in Code
Chapter 2 -- Statutory Construction
Chapter 11 -- Publication and Updating of Code

Title 2, chapter 4, part 4 -- Legislative Review of
Administrative Rules

Title 5, chapter 4 -- Legislative Branch -- Bills

Title 13, chapter 27 -- Ballot Issues

9-3 Rules of the Montana Legislature

Joint Rules

Chapter 6. Bills and Resolutions
Chapter 11. Statement of Legislative Intent

CHAPTER 10

COMPUTERIZED BILL DRAFTING

10-1 Introduction

The Legislative Council uses two major integrated computerized systems for research and bill drafting. The research system is called SIRS (Statutory Information Retrieval System). It consists of the full text of the Montana Constitution and the Montana Code Annotated on a computer disk. Research can be accomplished in a fraction of the time formerly required because the computer can determine the precise location by section and sentence of any key word in the Code. For instance, a drafter can frame a search on the computer to print out every section of the Code containing the word "governor" and have the list in seconds. The Legislative Council uses CRT terminals (similar to television screens) in searching the Code.

10-2 Framing a Search

Because the computer cannot think for itself, it is important, when considering whether or not to request a search, that the searcher have a good idea of the words or phrases the legislative drafter might have used to express the concept being searched. For example, if the search is for all sections of the Code providing statutes of limitations, that phrase actually may never be used. Instead, the drafter might have said, "suit must be brought within 6 years", or "if the action is not brought within 6 years it is barred", or even "the period of limitations is 6 years." Similarly, a search for sections that define criminal conduct might include the following: "felony", "misdemeanor", "fine", "may be fined", "may be imprisoned", "punishable by", "it is unlawful to ...", "guilty", "upon conviction of ...", and possibly "crime", "criminal", or "offense".

Words may be used in senses other than the one to be searched. For example, a drafter might wish to search for material relating to arrest or search warrants. A search of the word "warrant" alone would include not only search and arrest warrants, but warrants issued by the State Auditor, warrants of resurvey, stock warrants, and the verb form "if conditions warrant".

Some concepts are nearly impossible to search for, such as "conflict of interest". One can imagine how many ways a drafter might phrase provisions in this area.

Other concepts are so narrow in scope that all or most references are likely to appear in one title. A search may be made of only certain designated portions of the Code or certain portions of the Code may be excluded from the search.

The Legislative Council staff will frame a search through this system for other state agencies and the public and charge a fee therefor.

10-3 Drafting System

The bill drafting system is called ALTER (Automated Legal Text Entry and Revision). It is a computerized, telecommunications-based text editing system that permits many different text input, editing, and formatting activities to be carried out concurrently through the use of CRT terminals connected to a computer. Text entered at the terminal by an operator is automatically assembled into documents that can be retrieved, amended, corrected, or deleted at computer speeds. Line width, page depth, and tab settings become integral parts of each document.

If a bill amends present statutes, the statute sections are retrieved from the SIRS data base. By means of special format control codes, selected text can be automatically overstricken, underscored, and/or capitalized at printout time. The standard material in a bill, such as the bill identification, enacting clause, and introductory clauses are automatically formatted by retrieving specified documents that are stored for the use of all operators. Page numbering and sequential numbering of section catchlines are other automatic formatting facilities used. When input of the bill is complete, it is stored and need never be entered or proofed again. It can be retrieved for amending, engrossing, or enrolling. Because only the amendments need to be entered and proofed, the terminal operator and proofers are relieved of completely reentering and reproofing the now-amended bill. The same bill may be amended several times using the same procedure.

10-4 Photocomposition

From the enrolled bill in storage, a program of the ALTER system will produce a magnetic tape which will interface with photocomposition equipment and prepare camera-ready copy to print the Session Laws and the Montana Code Annotated without further typesetting or proofing required.

49th Legislature

1 _____ BILL NO. _____

2 INTRODUCED BY _____

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 3-1-601, MCA, is amended to read:

11 "3-1-601. Certain officers not to practice law or
12 administer estates. (1) No Except as provided in 3-1-604, no
13 justice or judge of a court of record or clerk of any court
14 may practice law in any court in this state or act as
15 attorney, agent, or solicitor in the prosecution of any
16 claim or application for lands, pensions, or patent rights
17 or other proceedings before any department of the state or
18 general government or any court of the United States during
19 his continuance in office.

20 (2) Neither the court administrator nor any assistant
21 may practice law in any of the courts of this state while
22 holding his position.

23 (3) No justice or judge of a court of record may act
24 as administrator or executor of any estate for
25 compensation."

Section 2. Section 3-1-603, MCA, is amended to read:

"3-1-603. No judicial officer of court of record to have partner practicing law. (1) No Except as provided in subsection (2), no judicial officer of a court of record may have a partner acting as attorney or counsel in any court of this state.

(2) A partner of a municipal court judge may act as attorney or counsel in any court of this state except the municipal court of his partner."

Section 3. Section 3-1-604, MCA, is amended to read:

"3-1-604. Restrictions on municipal court judges. No municipal court judge may practice law before his own municipal court or hold office in a political party during his term of office."

-End-

APPENDIX B
SAMPLE -- BILL WITH PREAMBLE

49th Legislature

LC 0002/01

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING SECTIONS
6 37-61-304 THROUGH 37-61-306, MCA, WHICH ESTABLISH PROCEDURES
7 FOR DISCIPLINING ATTORNEYS THAT ARE INCONSISTENT WITH ORDERS
8 AND RULES OF THE SUPREME COURT; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

10

11 WHEREAS, the Montana Supreme Court has original and
12 exclusive jurisdiction to discipline persons admitted to
13 practice law in Montana pursuant to Article VII, section
14 2(3), of the 1972 Montana Constitution and Title 37, chapter
15 61, MCA, and its inherent jurisdiction; and

16 WHEREAS, the Montana Supreme Court by its orders
17 governing the disciplining of persons admitted to practice
18 law in Montana established a Commission on Practice to
19 receive and investigate complaints of misconduct by lawyers
20 in Montana; and

21 WHEREAS, the Montana Supreme Court by its orders
22 governing the disciplining of persons admitted to practice
23 law in Montana also established grievance committees in each
24 judicial district to assist the Commission on Practice in
25 its investigation and processing of complaints of misconduct

1 by attorneys in Montana; and

2 WHEREAS, sections 37-61-304 through 37-61-306, MCA,
3 also address procedures for investigating and processing
4 complaints of misconduct by attorneys in Montana; and

5 WHEREAS, the procedures set forth in sections 37-61-304
6 through 37-61-306, MCA, are inconsistent with the procedures
7 established by the Montana Supreme Court in its orders.

8 THEREFORE, the Legislature of the State of Montana
9 finds it is appropriate to repeal those inconsistent
10 sections.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Repealer. Sections 37-61-304 through
14 37-61-306, MCA, are repealed.

15 Section 2. Effective date. This act is effective on
16 passage and approval.

-End-

APPENDIX C

LC 0003/01

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-End-

49th Legislature

1 BILL NO.

3 BY REQUEST OF THE JOINT SUBCOMMITTEE ON HIGHWAYS

5 A BILL FOR AN ACT ENTITLED: "AN ACT EMPOWERING THE HIGHWAY
6 COMMISSION TO ESTABLISH PRIORITIES AND TO SELECT ROADS FOR
7 CONSTRUCTION AND RECONSTRUCTION; AMENDING SECTION 60-2-201,
8 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11 NEW SECTION. Section 1. Setting priorities and
12 selecting projects. The commission shall establish
13 priorities and select and designate segments for
14 construction and reconstruction on federal-aid interstate
15 and federal-aid primary and state highway systems. The
16 commission shall use information gathered or discovered by
17 and documents prepared by the department, and department
18 officials and employees shall provide assistance and advice.

20 "60-2-201. General powers of department. (1) The
21 department may plan, lay out, alter, construct, reconstruct,
22 improve, repair, and maintain highways on the federal-aid
23 systems and state highways according to priorities
24 established by and on projects selected and designated by
25 the commission.

(2) The department may cooperate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

(3) The department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

(4) The department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges."

NEW SECTION. Section 3. Codification instruction. Section 1 is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60 apply to section 1.

NEW SECTION. Section 4. Effective date. This act is effective on passage and approval.

-End-

APPENDIX F

LC 0006/01

1 BILL NO.

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY FOR
5 THE OPERATION OF THE FORTY-EIGHTH LEGISLATURE AND PROVIDING
6 AN IMMEDIATE EFFECTIVE DATE."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Appropriation. The following amounts are
0 appropriated from the general fund for fiscal years 1983,
1 1984, and 1985 for the operation of the 48th Legislature and
2 pre-session costs of the 49th Legislature:

3	House of Representatives	\$1,938,674
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4	Senate	1,185,627
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5	Legislative Council	9,000,000
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6	Printing Legislative Publications	148,000
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Section 2. Effective date. This act is effective on
passage and approval.

-End-

APPENDIX G
SAMPLE -- BOND VALIDATING ACT

49th Legislature

LC 0008/01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT VALIDATING BONDS AND
5 OTHER INSTRUMENTS OR OBLIGATIONS ISSUED BY PUBLIC BODIES OF
6 THIS STATE PRIOR TO THE EFFECTIVE DATE OF THIS ACT AND
7 RATIFYING ALL RELATED ACTIONS TAKEN BY SUCH PUBLIC BODIES."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Short title. [This act] may be cited as the
11 "Bond Validating Act".

12 Section 2. Definitions. As used in [this act], the
13 following definitions apply:

14 (1) "Bonds" includes all instruments of indebtedness,
15 the borrowing of money, or a charge or encumbrance on
16 specific revenue or property of a public body.

17 (2) "Public body" means any political subdivision of
18 the state and includes but is not limited to a county, city,
19 town, or school district.

20 Section 3. Validation. All bonds issued by any public
21 body of this state and related proceedings, regardless of
22 any defects in such proceedings, are validated. Bonds of a
23 public body issued under the authority of proceedings taken
24 prior to October 1, 1985, are valid whether issued before or
25 after such date.

1 Section 4. Saving clause. [This act] does not apply to
2 any action instituted before October 1, 1985, in which the
3 validity of certain proceedings or bonds is at issue.

-End-

1 This amendment shall be submitted to the electors of Montana
2 at the general election to be held in November 1986 by
3 printing on the ballot the full title of this act and the
4 following words:

5 ☐ FOR annual sessions.

6 ☐ AGAINST annual sessions.

-End-

APPENDIX H
SAMPLE -- BILL FOR CONSTITUTIONAL AMENDMENT

49th Legislature

LC 0010/01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE
5 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II,
6 SECTION 18, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE
7 LEGISLATURE MAY DETERMINE WHEN THE STATE OR ITS SUBDIVISIONS
8 MAY NOT BE SUED."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Article II, section 18, of the Constitution
12 of the State of Montana is amended to read:

13 "Section 18. State subject to suit. The state,
14 counties, cities, towns, and all other local governmental
15 entities shall have no immunity from suit for injury to a
16 person or property, except as may be specifically provided
17 by law by a two-thirds vote of each house of the
18 legislature. ~~This provision shall apply only to causes of~~
19 ~~action arising after July 17, 1973.~~"

20 NEW SECTION. Section 2. Effective date. If approved
21 by the electorate, this amendment shall be effective
22 September 1, 1987.

23 NEW SECTION. Section 3. Submission to electorate.
24 This amendment shall be submitted to the electors of Montana
25 at the general election to be held in November 1986 by

1 printing on the ballot the full title of this act and the
2 following:

3 ☐ FOR allowing the legislature to determine sovereign
4 immunity.

5 ☐ AGAINST allowing the legislature to determine
6 sovereign immunity (i.e., for continuing to prohibit
7 sovereign immunity).

-End-

APPENDIX I
SAMPLE -- REFERENDUM

49th Legislature

LC 0011/01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 16-3-301, MCA, TO RAISE THE LEGAL DRINKING AGE TO 21 AND
6 PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS
7 OF THE STATE OF MONTANA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 16-3-301, MCA, is amended to read:

11 "16-3-301. Unlawful purchases, sales, or deliveries.

12 (1) It shall be unlawful for a licensed retailer to purchase
13 or acquire beer from anyone except a brewer or wholesaler
14 licensed under the provisions of this code.

15 (2) It shall be unlawful for any licensee, his or her
16 employee or employees, or any other person to sell, deliver,
17 or give away or cause or permit to be sold, delivered, or
18 given away any alcoholic beverage to:

19 (a) any person under the age of ~~19~~ 21 years;

20 (b) any intoxicated person or any person actually,
21 apparently, or obviously intoxicated.

22 (3) Any minor or other person who knowingly
23 misrepresents his or her qualifications for the purpose of
24 obtaining an alcoholic beverage from such licensee shall be
25 equally guilty with said licensee and shall upon conviction

1 thereof be subject to the penalty provided in 45-5-624;
2 provided, however, that nothing herein contained shall be
3 construed as authorizing or permitting the sale of an
4 alcoholic beverage to any person in violation of any federal
5 law.

6 (4) It shall be further mandatory under the provisions
7 of this code that all licensees display in a prominent place
8 in their premises a placard as issued by the department
9 stating fully the consequences for violations of the
10 provisions of this code by persons under the age of ~~19~~ 21
11 years."

12 NEW SECTION. Section 2. Effective date. If approved
13 by the electorate, section 1 of this act is effective
14 January 1, 1986.

15 NEW SECTION. Section 3. Submission to electorate. The
16 question of whether section 1 of this act will become
17 effective shall be submitted to the electors of the State of
18 Montana at the general election to be held in November 1985,
19 by printing on the ballot the full title of this act and the
20 following:

21 ☐ FOR raising the legal drinking age to 21.

22 ☐ AGAINST raising the legal drinking age to 21.

-End-

49th Legislature

1 _____ BILL NO. _____

2 INTRODUCED BY _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING AN AMENDMENT
5 TO RULE 4.6.607 OF THE ADMINISTRATIVE RULES OF MONTANA TO
6 PERMIT A HUSBAND AND WIFE FILING SEPARATE INCOME TAX RETURNS
7 TO DIVIDE THE INCOME FROM A JOINT VENTURE OR PARTNERSHIP
8 ACTIVELY MANAGED BY BOTH; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

10

11 WHEREAS, income tax regulations promulgated by the
12 Department of Revenue now provide that net income from a
13 business operated jointly by a husband and wife, such as a
14 farm or ranch, is the income of only one spouse unless the
15 spouses file as a partnership on their federal income tax
16 return; and

17 WHEREAS, this rule is arbitrary in that it obliges
18 married taxpayers to forego either the federal tax
19 advantages of joint filing or the state tax advantages of
20 separate filing; and

21 WHEREAS, this rule is against public policy in that it is
22 fails to recognize the equal contributions of both spouses
23 to the management of many farms, ranches, small businesses,
24 and firms.

25

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 Section 1. Department to amend rule. The department of
 3 revenue shall amend Rule 4.6.607 of the Administrative Rules
 4 of Montana to delete the requirement that spouses dividing
 5 income from a joint venture must organize a bona fide
 6 partnership and file federal income tax returns as such and
 7 to provide that spouses may allocate the income from a
 8 jointly managed business according to their respective
 9 contributions of time, labor, and capital to the business.
 10 The amendment must be made to apply to taxable years
 11 beginning after December 31, 1984.

12 Section 2. Effective date. This act is effective on
 13 passage and approval.

-End-

49th Legislature

1 _____ BILL NO. _____

2 INTRODUCED BY _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAX
5 CREDIT FOR NEW OR EXPANDING MANUFACTURERS; DIRECTING THE
6 AMENDMENT OF RULE 42.23.511, ADMINISTRATIVE RULES OF
7 MONTANA; REPEALING RULE 42.23.517, ADMINISTRATIVE RULES OF
8 MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
9 APPLICABILITY DATE."

14 "42.23.511 CREDIT FOR NEW OR EXPANDING CORPORATIONS
15 MANUFACTURERS (1) Sections 15-31-124 through 15-31-127, MCA,
16 as amended, allow a tax credit equal to 1% of wages paid by
17 a new or expanding corporation manufacturer. Any
18 corporation manufacturer seeking credit under 15-31-124
19 through 15-31-127, MCA, shall conclusively demonstrate its
20 eligibility to the department. The department's decision
21 shall be final.

24 (a) ~~that it is a corporation preregistered pursuant to~~
25 ~~Title 357 chapter 17 MCA, as -- amended~~ the manufacturer is

1 preregistered as a valid existing business under the laws of
 2 this state;

3 (b) that it was registered for the first time during
 4 the tax year for which the first credit is claimed or that
 5 the industry meets the definition of expanding per
 6 15-31-124, MCA, as amended; and

7 (c) that ~~the corporation is engaged in manufacturing~~
 8 the applicant is a manufacturer as that term is defined in
 9 15-31-124, MCA; ~~and~~

10 ~~{d}--that the product manufactured is one which prior~~
 11 ~~to its production by the corporation, was not then currently~~
 12 ~~produced in this state."~~

13 NEW SECTION Section 2. Repealer. Rule 42.23.517,
 14 Administrative Rules of Montana, is repealed.

15 NEW SECTION. Section 3. Effective date --
 16 applicability. This act is effective on passage and approval
 17 and applies to taxable years beginning after December 31,
 18 1984.

-End-

49th Legislature

1 _____ JOINT RESOLUTION NO.

2 INTRODUCED BY _____

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE
6 ADOPTION OF A RULE BY THE DEPARTMENT OF FISH, WILDLIFE, AND
7 PARKS PROVIDING FOR THE EXAMINATION OF APPLICANTS FOR
8 OUTFITTERS' LICENSES AT LOCATIONS OUTSIDE HELENA.

10 WHEREAS, the Department of Fish, Wildlife, and Parks
11 licenses outfitters by examining applicants for such
12 licenses at its Helena offices; and

13 WHEREAS, the Department could examine such applicants
14 at its regional headquarters with little administrative
15 inconvenience and by so doing would relieve the license
16 applicants of an unwarranted burden.

18 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
19 OF REPRESENTATIVES OF THE STATE OF MONTANA:

20 That the Fish and Game Commission is requested to
21 immediately initiate proceedings to adopt a rule setting out
22 procedures for the examination of applicants for outfitters'
23 licenses at the various regional headquarters of the
24 Department of Fish, Wildlife, and Parks.

99

49th Legislature

1 _____ JOINT RESOLUTION NO. _____
2 INTRODUCED BY _____
3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN
6 AMENDMENT TO RULE 4.6.607 OF THE ADMINISTRATIVE RULES OF
7 MONTANA TO PERMIT A HUSBAND AND WIFE FILING SEPARATE INCOME
8 TAX RETURNS TO DIVIDE THE INCOME FROM A JOINT VENTURE OR
9 PARTNERSHIP ACTIVELY MANAGED BY BOTH.

10
11 WHEREAS, income tax regulations promulgated by the
12 Department of Revenue now provide that net income from a
13 business operated jointly by a husband and wife, such as a
14 farm or a ranch, is the income of only one spouse unless the
15 spouses file as a partnership on their federal income tax
16 return; and

17 WHEREAS, this rule is arbitrary in that it obliges
18 married taxpayers to forego either the federal tax
19 advantages of joint filing or the state tax advantages of
20 separate filing; and

21 WHEREAS, this rule is against public policy in that it
22 fails to recognize the equal contributions of both spouses
23 to the management of many farms, ranches, small businesses,
24 and firms.

1
2 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
3 OF REPRESENTATIVES OF THE STATE OF MONTANA:

4 That the Department of Revenue is strongly urged to
5 proceed within 30 days to amend Rule 4.6.607 of the
6 Administrative Rules of Montana to delete the requirement
7 that spouses dividing income from a joint venture must
8 organize a bona fide partnership and file federal income tax
9 returns as such and to provide that spouses may allocate the
10 income from a jointly managed business according to their
11 respective contributions of time, labor, and capital to the
12 business.

-End-

APPENDIX L
SAMPLE -- SIMPLE RESOLUTION

49th Legislature

LC 0016/01

1 HOUSE RESOLUTION NO. _____

2 INTRODUCED BY _____

3
4 A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA THAT WHENEVER PRACTICABLE ITS MEMBERS SHALL SALVAGE
6 USED PAPER FOR RECYCLING.

7
8 WHEREAS, the Legislature and offices of state
9 government use large amounts of paper each year; and

10 WHEREAS, this Legislature, this state, and this nation
11 are concerned about the shortage of paper; and

12 WHEREAS, the efficient use of forest products is of
13 great concern to all our citizens; and

14 WHEREAS, this House of Representatives desires to make
15 a concerted effort toward a continual program of salvaging
16 paper products for reuse; and

17 WHEREAS, a new industry in the State of Montana has
18 indicated its willingness to cooperate with an immediate
19 program of recycling.

20
21 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
22 REPRESENTATIVES OF THE STATE OF MONTANA:

23 That the members of this House of Representatives shall
24 immediately institute a used-paper recycling program by
25 depositing used paper in the proper receptacles.

1 BE IT FURTHER RESOLVED, that the Chief Clerk of the
2 House shall contact the proper authorities and make all
3 arrangements necessary to carry out this program.

-End-

49th Legislature

1 JOINT RESOLUTION NO.

2 INTRODUCED BY

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING MOTORISTS TO
6 DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

8 WHEREAS, hundreds of Montanans lose their lives in
9 traffic accidents each year; and

10 WHEREAS, one out of every five traffic accidents on the
11 open highway is the result of a head-on collision; and

12 WHEREAS, etc.

14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16 That members of the motoring public of Montana be
17 encouraged to drive with their headlights on low beam in the
18 daytime to deter head-on collisions on the open highway.

19 BE IT FURTHER RESOLVED, that the Secretary of State
20 send copies of this resolution to the publisher of each
21 newspaper in the state.

22 BE IT FURTHER RESOLVED, that this resolution, etc.

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APPENDIX M
SAMPLE -- JOINT RESOLUTION

49th Legislature

LC 0018/01

1 JOINT RESOLUTION NO.

2 INTRODUCED BY

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING MOTORISTS TO
6 DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

8 WHEREAS, hundreds of Montanans lose their lives in
9 traffic accidents each year; and

10 WHEREAS, one out of every five traffic accidents on the
11 open highway is the result of a head-on collision; and

12 WHEREAS, etc.

14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16 (1) That members of the motoring public of Montana be
17 encouraged to drive with their headlights on low beam in the
18 daytime to deter head-on collisions on the open highway.

19 (2) That copies of this resolution be sent by the
20 Secretary of State to the publisher of each newspaper in the
21 state.

22 (3) That this resolution, etc.

-End-

49th Legislature

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN
6 INTERIM STUDY OF THE ALTERNATIVE WAYS AND EFFECTS OF
7 AUTHORIZING BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT
8 UNIONS TO BRANCH WITHIN THE STATE; REQUIRING A REPORT OF THE
9 FINDINGS OF THE STUDY TO THE LEGISLATURE.

10

11 WHEREAS, it is apparent that a great number of
12 Montana's citizens are interested in authorizing banks,
13 savings and loan associations, and credit unions to
14 establish and maintain branch facilities in the state; and

15 WHEREAS, the law prohibits banks from maintaining a
16 branch facility; and

17 WHEREAS, there are various alternative methods for
18 authorizing branching; and

19 WHEREAS, the Legislature has not studied the need for
20 branching in the state; and

21 WHEREAS, in order to best serve the public, a thorough
22 study of all the effects and alternative ways of authorizing
23 banks, savings and loan associations, and credit unions to
24 branch should be made.

25

1 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
2 OF REPRESENTATIVES OF THE STATE OF MONTANA:

3 That an appropriate interim committee be assigned to
4 study:

5 (1) the need for banks, savings and loan associations,
6 and credit unions to branch within the state;

7 (2) the various alternative methods for authorizing
8 branching; and

9 (3) the effects of authorizing banks, savings and loan
10 associations, and credit unions to branch within the state.

11 BE IT FURTHER RESOLVED, that the Committee report the
12 findings of the study to the 50th Legislature and, if
13 necessary, draft legislation to implement its
14 recommendations.

-End-

49th Legislature

1 BILL NO.

2 INTRODUCED BY

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Strike everything after the enacting clause and insert:

13 (1) a federal application has been approved;
14 (2) the drug is not subject to federal law; or
15 (3) an application has been filed with the department
16 containing:

19 (b) a list of the substances of which the drug is
20 composed; and

23 (i) be false or misleading; or

24 (ii) contain a name used by a registered drug unless:

25 (A) permission has been granted and a license has been

obtained; or

(B) the name is for temporary use.

NEW SECTION. Section 2. Nonapplication of preceding section. [Section 1] does not apply to any drug subject to 50-31-102 if the drug:

(1) is commercially sold in the United States; and

(2) has been tested by the department of health and environmental sciences.

Section 3. Section 50-31-105, MCA, is amended to read:

"50-31-105. Hallucinogenic drugs -- prohibitions. It ~~shall be~~ is unlawful for ~~any~~ a person to manufacture ~~any~~ a hallucinogenic drug."

-End-

APPENDIX O
SAMPLE BILL FORM -- COMPLETE

49th Legislature

LC 0021/01

BILL IDENTIFICATION
(Designation & No.)

1

BILL NO.

(Sponsor)

2

INTRODUCED BY

(State agency or
committee requestor
if any)

3

BY REQUEST OF

4

TITLE

5

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A
6 SAMPLE BILL FOR THE BILL DRAFTING MANUAL;
7 AMENDING SECTION 2-17-301, MCA; REPEALING
8 SECTIONS 27-18-101 THROUGH 27-18-112, 45-5-102,
9 AND 45-5-601, MCA; AND PROVIDING AN
10 APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
11 DATE."
12

PREAMBLE
(optional)

13

WHEREAS, it is necessary to draft a
14 composite bill containing unrelated sections in
15 order to provide examples of various bill parts
16 and the format used in drafting, amending, or
17 repealing statutes.
18

ENACTING CLAUSE
(mandatory)

19

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
20 MONTANA:

BODY
(Short title)

21

NEW SECTION. Section 1. Short title.

22

[Sections 1 through 4 and 6 through 8] may be
23 cited as the "Bill Sample Act of 1985".

(Purpose)

24

NEW SECTION. Section 2. Purpose. The

25

purpose of [sections 1 through 4 and 6 through

1 8] is to create a bill, the structure of which
2 may be used as an example of correct style and
3 form by attorneys and other bill drafters.

(Definitions)

4 NEW SECTION. Section 3. Definitions. As
5 used in [sections 1 through 4 and 6 through 8],
6 the following definitions apply:

7 (1) "Code" means the Montana Code
8 Annotated.

9 (2) "Recodify" means to compile, arrange,
10 rearrange, and prepare the code for
11 republication.

(Basic provisions)

12 NEW SECTION. Section 4. Department head.
13 Each department head shall supervise the
14 functions vested in his department.

(Amendatory
material)

15 Section 5. Section 2-17-301, MCA, is
16 amended to read:

17 "2-17-301. Supervision of mailing
18 facilities. The ~~controller~~ department shall
19 maintain and supervise the central mailing
20 facilities."

(Designating new
material when
mixed with
amendatory
material)

21 NEW SECTION. Section 6. Code commissioner
22 office created. The office of code commissioner
23 is created within the legal services division of
24 the legislative council.

25 NEW SECTION. Section 7. Sale or donation

1 of new drug unlawful -- exceptions. No person
2 may sell, offer for sale, hold for sale, or give
3 away a new drug unless:

(Outline form)

4 (1) a federal application has been
5 approved;

6 (2) the drug is not subject to federal
7 law; or

8 (3) an application has been filed with the
9 department containing:

10 (a) a summary of the conclusions drawn
11 from investigation of the drug;

12 (b) a list of the substances of which the
13 drug is composed; and

14 (c) a sample of the label proposed as
15 identification for the drug, which must not:

16 (i) be false or misleading; or

17 (ii) contain a name used by a registered
18 drug unless:

19 (A) permission has been granted and a
20 license has been obtained; or

21 (B) the name is for temporary use.

(Penalty)

22 NEW SECTION. Section 8. Penalty. A person
23 convicted of violating 45-2-102 shall be fined
24 not more than \$500 or be imprisoned in the
25 county jail for a term no longer than 6 months

1 or both.

(Repealer) 2 NEW SECTION. Section 9. Repealer.
3 Sections 27-18-101 through 27-18-112, 45-5-102,
4 and 45-5-601, MCA, are repealed.

(Codification instruction) 5 NEW SECTION. Section 10. Codification
6 instruction. Sections 1 through 4 and 6 through
7 8 are intended to be codified as an integral
8 part of Title 2, chapter 6, part 7, and the
9 provisions of Title 2, chapter 6, part 7, apply
10 to sections 1 through 4 and 6 through 8.

(Coordination instruction) 11 NEW SECTION. Section 11. Coordination
12 instruction. If Senate Bill No. 200 [LC 600],
13 including the section of that bill amending
14 1-1-101, is passed and approved, section 5 of
15 this act, amending 2-17-301, is void.

(Saving clause) 16 NEW SECTION. Section 12. Saving clause.
17 This act does not affect rights and duties that
18 matured, penalties that were incurred, or
19 proceedings that were begun before the effective
20 date of this act.

(Severability clause) 21 NEW SECTION. Section 13. Severability. If
22 a part of this act is invalid, all valid parts
23 that are severable from the invalid part remain
24 in effect. If a part of this act is invalid in
25 one or more of its applications, the part

1 remains in effect in all valid applications that
2 are severable from the invalid applications.

3 OR

(Nonseverability
clause)

4 NEW SECTION. Section 13. Nonseverability.
5 It is the intent of the legislature that each
6 part of this act is essentially dependent upon
7 every other part; and if one part is held
8 unconstitutional or invalid, all other parts are
9 invalid.

(Applicability)

10 NEW SECTION. Section 14. Applicability.
11 This act applies retroactively, within the
12 meaning of 1-2-109, to occurrences after
13 December 31, 1983.

14 OR

15 NEW SECTION. Section 14. Applicability.
16 This act applies to taxable years beginning
17 after December 31, 1985.

(Effective date)

18 NEW SECTION. Section 15. Effective date.
19 This act is effective on passage and approval.

20 OR

21 NEW SECTION. Section 15. Effective date.
22 This act is effective December 1, 1985.

-End-

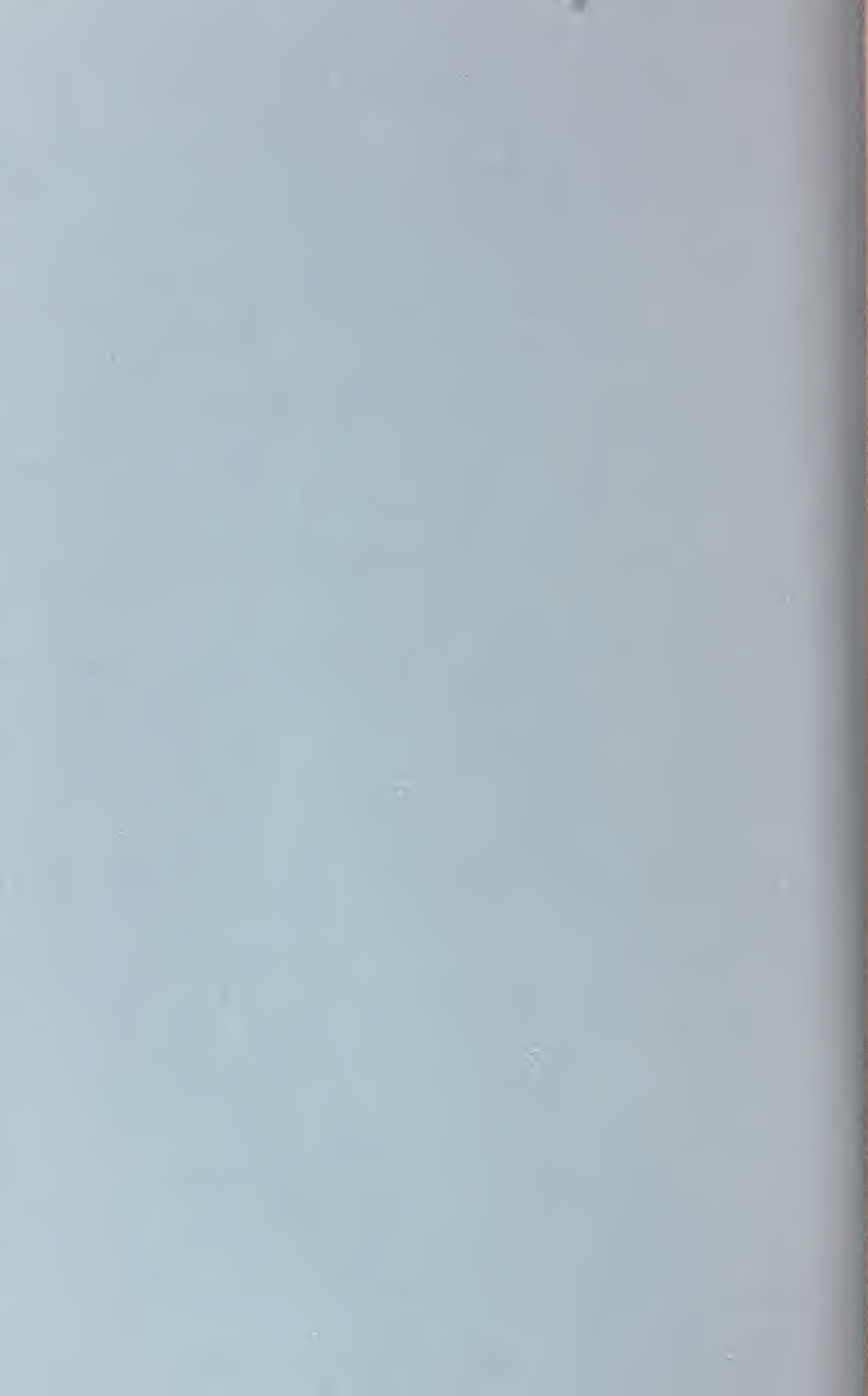
APPENDIX P

SHORT BILL TITLE

(For Bill Status System)

Write the short title one character/letter per space
(counting the blanks between the words as characters).

Use no more than the allotted 76 characters per title.



APPENDIX Q

SUGGESTED ASSIGNMENT

OF

STATUTE NUMBERS

LC _____

Bill Drafter _____

Bill

Statute No.

Section No.

Suggested



APPENDIX R

BILL DRAFTER CHECKLIST

Drafter _____ Phone _____

Conformity with state and federal Constitutions considered
(section 1-2)? _____

Existing Montana statutes reviewed to avoid conflicts,
duplication, or confusion (section 1-3)? _____

Note attached indicating source of draft (e.g., model act,
other state statute, etc.) (section 1-6)? _____

Internal references checked using internal reference list
(section 1-7)? _____

Fiscal note required (section 6-1)? _____

Fiscal impact requiring July 1 effective date (section
6-1)? _____

Statement of legislative intent required (section 6-3)? _____

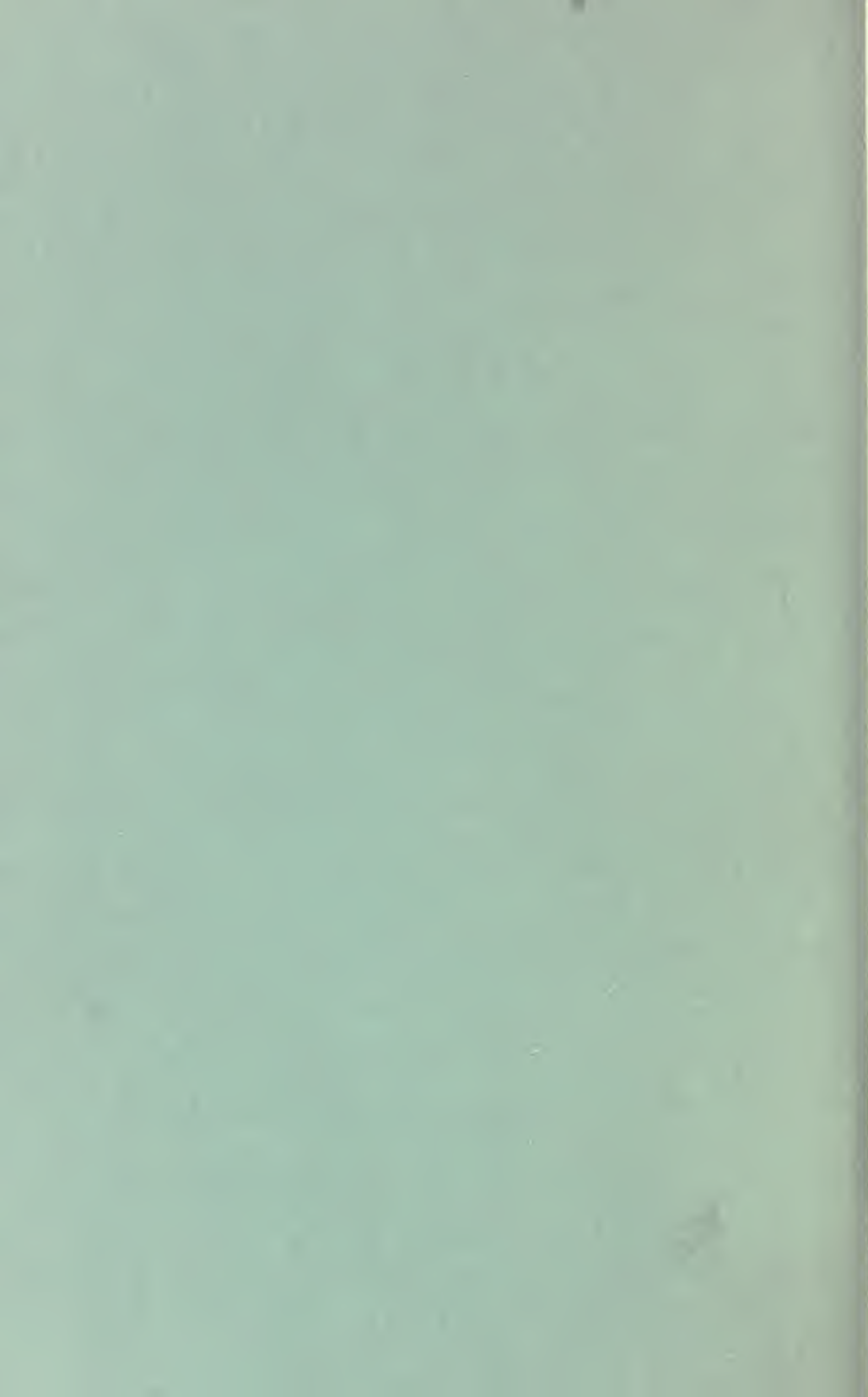
Code placement and applicability considered; codification
instruction included in draft or suggested assignment of
statute numbers attached (section 4-18, Appendix Q)? _____

Title contains one subject clearly expressed (section
4-4)? _____

Short bill title attached (section 4-4(7), Appendix P)? _____

If state agency bill, "By Request" line included (section
4-3(4))? _____

(Note: Each question on checklist calls for "yes", "no", or
"N/A" (not applicable) response.)



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